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THE

SCIENCE OF GOVERNMENT

IN CONNECTION WITH

AMERICAN INSTITUTIONS.

NEW EDITION

BY

JOSEPH ALDEN, D.D., LL.D.,

PRESIDENT OF STATE NORMAL SCHOOL, ALBANY, N. Y., AUTHOR OF "THE YOUNG CITIZEN'S MANUAL," "AN INTRODUCTION TO THE USE OF THE ENGLISH LANGUAGE," "STUDIES IN BRYANT," ETC.

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Your counsel and encouragement led me to give, in my college teaching, greater prominence to studies adapted to prepare young men to perform their duties as citizens of the United States than is usually given in our Colleges. In view of that fact, and of your zeal and labors in the cause of education and government, I beg leave to inscribe to you this effort to aid my young countrymen in preparing themselves for the work before them.

JOSEPH ALDEN.

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PREFACE.

THE importance of the study of the Science of Government in a country where every one has an influence in the affairs of government, does not need to be argued. Books suitable for its study in our educational institutions should be furnished. This volume is designed as a text-book for our higher institutions. It contains, in a compact form, the facts and principles which every American citizen ought to know. It may be made the basis of a brief, or of an extended course of instruction, as circumstances may require. Though primarily designed as a text-book, the general reader will find every portion of it perfectly intelligible.

PUBLISHERS' NOTICE.

THIS edition of "THE SCIENCE OF GOVERNMENT," is printed from new plates.

So many copies of this valuable text book have been printed and sold that the stereotyped plates were worn out.

All necessary corrections have been made by the author.

A chapter has been added on Parliamentary Rules.

The paging in this edition corresponds with that of previous editions.

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THE

SCIENCE OF GOVERNMENT.

CHAPTER I.

OBJECT AND NECESSITY OF GOVERNMENT—ORIGIN OF CIVIL SOCIETY—THE SOCIAL COMPACT—GOVERNMENT A DIVINE INSTITUTION—JUSTICE THE FUNDAMENTAL LAW—SOVEREIGN POWER VESTED IN THE PEOPLE.

Government has for its great object the maintenance of justice among men. That men may live together in peace, there must be laws restraining them from injustice, and protecting them in the enjoyment of their rights. The office of government is to make and execute such laws.

Civil society cannot exist without government. By civil society is meant men living together in a social civilized state. Men cannot live together in such a state without government. Experience shows that some men are disposed to do injustice to others,

and must be restrained by laws. Were there no laws, every one could do as he pleased. The wicked could defraud, rob and murder with impunity. Such a state of things is called a state of *anarchy*.

Civil society is an institution of God—is of divine origin. God made men to live together in a social civilized state. He gave them a social and moral nature, which makes that condition their natural condition. He has given man desires and capacities which can find exercise only in society. The solitary or savage state is not the natural state of man.

The social civilized state is necessary to the full development of man's physical, intellectual, social, and moral nature. The solitary state is an impossibility, that is, all men could not lead solitary lives. If the attempt were made, the race would become extinct. The savage state is possible. Savage tribes do exist, but savages are in all respects inferior to civilized men. They have not those means of guarding the body from disease which civilized men have. Their intellectual, social, and moral powers are very imperfectly developed. Man's powers are developed by exercise, and the savage state does not furnish the conditions of that exercise. It will be admitted that God makes nothing in vain. It is as plainly His will that man's nature should be developed, as it is that the fruit-tree should grow and bring forth fruit. The civilized state alone furnishes the conditions for the

proper exercise and development of all man's powers. Therefore, God designed that men should live in civilized society.

Civil society, or the State, then, is not a voluntary association, as some have taught. It did not originate in a social compact, that is, in an agreement to abandon the solitary and savage state, and to adopt the civilized state. Writers on government, and legislators, sometimes refer to "the social compact" as though it were an historical fact. History gives no account of "the social compact." No one ever asserted that such an event ever took place. And yet some have referred to this fiction as the ground of our obedience to law.

It is said that by "the social compact" men agree to relinquish a portion of their natural rights on condition of being protected in the enjoyment of the remaining portion, and to render obedience to the laws. It is said that their obligation to be subject to the restraints of society, is founded on their consent to the social compact—the formal consent of the framers of the compact, and the tacit consent of all succeeding generations.

Now, as no such compact was ever formed, it cannot be the ground of any obligation whatever. The fundamental laws of civil society—the laws or rules of justice, do not owe their authority to the consent of the governed.

Men become members of civil society—of the State—by the act of God. He created man a social being and a subject of law. Men have no right to abjure society, throw off its restraints, and lead solitary lives. No man has a right to be a brute, or any thing but a man. In order to be a man, he must be a member of society, and subject to law.

Suppose all men were to meet together in one vast convention, and to vote unanimously to abolish society, and government, and law of every kind: would such a vote have any authority? Certainly not. The obligation to live in society and have government, would not be affected by such a vote, or by any thing that men can do. God's will does not depend upon the will of men. It is plainly his will that men should live together and enjoy the benefits resulting from obedience to righteous laws.

The State may be considered apart from government, though they usually coëxist. They always coexist, except in those rare periods when anarchy prevails. *Government* is the agent by which the State ordinarily acts. The State performs extraordinary acts when it abolishes one form of government and institutes another. The acts of the State, by which governments are made and unmade, are termed acts of original sovereignty.

Government is a divine institution—is of divine origin. This appears from the fact that the State is a

divine institution, and is under obligation to have government. God is the author of man's nature. The State is the necessary result of man's nature. Government is the necessary result of the State. Therefore government is of God. "The powers that be," that is, the legitimate powers of government, "are ordained of God" (Rom. xiii. 1). God is the author of government, just as He is the author of the forest that clothes the mountain's side. The one is the result of His moral laws, the other is the result of His physical laws.

Justice is the fundamental idea of the State. All its regulations should be but the applications of the principle of justice. In other words, all its rules should be just rules. If all men would practice justice, they could live together in peace without a legal code. That men should do that which is just is a self-evident truth. As the State is under obligation to secure justice to its members, it is under obligation to use the means best adapted to secure that end. Government is a necessary means of securing justice, hence, again we see that the State is under obligation to have government. In other words, government is necessary in order that man may be such a being as God designed he should be.

The sovereign, or *supreme power,* resides in the State, not in the government. Government derives its powers from the State. The power of the State is

limited by its fundamental law—the law of justice. The State has no rightful power to form an unjust government, or to perform any unjust act.

The State gives to government its powers. It is under obligation to give to it such powers as are best adapted to enable it to subserve the ends of justice and public prosperity.

The sovereign, or supreme power, belongs to the State, that is, to the people who constitute the State. The sovereign power belongs to the people, not in their individual, but in their collective capacity. The State possessing sovereign power may have a million members. It does not follow that each individual possesses one-millionth part of the sovereign power, or is thereby constituted the one-millionth part of a sovereign.

The relation of individuals in the State to the sovereign power may be illustrated by a joint-stock company. An insurance company has power to make contracts for insurance. Suppose there are ten members. They, or a majority of them acting as a company, can make a contract, or authorize their agents to do so; but one of their number cannot make one-tenth part of a contract. The whole power of the company belongs to the ten members (not of necessity equally), but the whole power cannot be divided into ten parts, each part being wielded separately by

individuals. Such a course of proceeding would defeat the end for which the company was formed.

In like manner, the whole power of the State belongs to the members of the State—the individuals composing the State ; but this power is not divisible among those individuals, to be wielded separately by each. Such a course of proceeding, were it possible, would defeat the ends for which the State exists.

CHAPTER II.

THE RIGHT OF SUFFRAGE—UNIVERSAL SUFFRAGE—LIMITED SUFFRAGE—THE TRUE PRINCIPLE—AN ANALOGY.

The State as we have seen, is under obligation to appoint an agency, viz., government, to wield a portion of its power. Has every member of the State a voice in designating those who shall exercise the powers of government? in other words, has every one a right to vote for those who shall rule over him?

Some think that *the right to vote* is an attribute of humanity—that every one has a right to vote because he is a man. This is denied by others; hence the burden of proof rests on those who make the affirmation. They have no right to assume it as a self-evident truth.

If the right to vote it an attribute of humanity, then women have a right to vote as well as men.

It is said by some, that as every man is bound to render obedience to the law, every man should have a voice in choosing those who make the laws. It is

assumed that a man cannot rightfully be held subject to the laws, unless he has given his consent to them by taking part in choosing the law-makers.

In reply to this, it is said, that man was created a subject of law. He is subject to the law of rectitude. His consent is not asked. He is born into the State, and is subject to its fundamental law—the law of justice. His consent is not asked. A man may as well object to being born without his consent, as to object to being subject to righteous laws without his consent.

If none are rightfully subject to the laws except those who have given their consent to them by voting for rulers, then women are not rightfully subject to the laws.

Others think that the right to vote is not an attribute of humanity. They think that the question as to who shall vote depends upon circumstances which vary with time and place. They reason thus: The State is under obligation to have the best government possible. Hence the State, that is, the people, are under obligation to use the means best adapted to secure the best government possible. Among the means to be used is the choice of good rulers. Such a course should be taken in choosing them, as is best adapted to the end sought, viz., good rulers. If universal suffrage will secure the best rulers, then universal suffrage ought to prevail. If a restricted suffrage will

secure the best rulers, then a restricted suffrage ought to prevail.

If the decision be in favor of a restricted suffrage, the same principle will determine the nature of the restrictions. If limiting suffrage to those who possess a certain amount of property will secure the best rulers, then that limitation should take place. It is for the interest of the man who is destitute of property, as much as it is for the interest of the man possessed of property, that the best rulers should be secured.

The advocates of a *property qualification* do not contend that the possession of property makes a man more intelligent or more patriotic. He has a deeper interest in having a good government than he who has nothing to lose. He has an interest in having property secure, taxes light, and justice administered between man and man. Men are strongly influenced by their interests.

It has been proposed that those only should vote who can read and write. If such a provision would secure the choice of better rulers than would otherwise be chosen, it should be adopted. It ought not, however, to be taken for granted, that the mere ability to read and write will qualify one intellectually and morally to perform so important an act as that of selecting men to make and execute the laws, upon which the prosperity of a nation in a great measure depends.

Suppose there is a ship at sea with five hundred passengers on board. A storm sweeps the captain and all the officers overboard. Some one must take command of the ship, or all on board will be lost. He must have a knowledge of navigation, and the nerve requisite for command. There are few persons on board capable of forming a correct opinion respecting a man's knowledge of navigation, and his abilities to manage the ship. The great majority have no capacity for forming such an opinion. Who shall choose the captain, the intelligent few or the ignorant many? Will it not be for the interest of all on board that he be chosen by those capable of judging as to his qualifications?

The majority may say, "We have as much interest in the safety of the ship as those to whom it is proposed to limit the choice: our lives are as dear to us as theirs are to them." These assertions would doubtless be true, but it would not follow that all should vote in the choice of a captain. The adoption of a course adapted to promote the highest safety of all, would not deprive the majority of any right.

There is *some* analogy between the supposed ship and the ship of State. It is for the interest of all that the best rulers be chosen. The adoption of a course the best adapted to secure that end would not infringe upon the rights of any. Every man has a right to be governed justly, but it does not follow that every man has a right to be a governor.

In the earlier periods of our history, the elective franchise was limited in all the Colonies and States. Soon after the adoption of the Federal Constitution, the tendency set toward universal suffrage. One State after another adopted it as they revised their constitutions, till now the right of suffrage is possessed by every citizen of the United States.

CHAPTER III.

LIBERTY AND LAW—DIFFERENT FORMS OF GOVERNMENT—MONARCHY ABSOLUTE AND LIMITED—HEREDITARY AND ELECTIVE—ARISTOCRACY—REPUBLIC.

Justice is the great end of government. Let justice be perfectly administered to a people, and all the conditions of national prosperity will follow, at least all that depend on the action of the government. To say that the great end of government is to secure justice, is to say, in other words, that the great end of government is to secure liberty.

Liberty is the result of law—not, as many suppose, of the absence of law. Many suppose that men are free only in proportion as they are without restraint. They suppose that so far as men are under law, they are without liberty. They suppose that men relinquish a portion of their natural liberty in consequence of becoming members of the State and subjects of law.

We have seen that men are born members of the

State and subjects of law, and hence they never had any rights the result of not being subjects of law. It is true that a man in society is restrained from doing some things which he would be at liberty to do if he were a solitary being. But he was not created a solitary being, and hence has none of the natural rights of a solitary being. Hence he cannot relinquish the natural rights of a solitary being. The fish cannot claim that he relinquishes the right to fly in the air in order that he may swim in the water. Man cannot claim that he relinquishes the freedom of the solitary and the savage state, in order that he may become a civilized man.

Law secures, or is intended to secure, to a man all the liberty he can rightfully claim. He cannot claim liberty to live under water or to take poison. If the law forbids him to live under water or to destroy himself by taking poison, it does not thereby restrain his liberty. He was not made to live under water nor to take poison. The law forbids him to murder, but that does not abridge his liberty. He never had a right to murder. He cannot claim liberty to do wrong. So far as the law restrains him from doing wrong, it does not interfere with his liberty. So far as the law restrains him from doing what a being made to live in society ought not to do, it does not interfere with his liberty. So long as it does not interfere with his rights, it does not interfere with his

liberty. He has no right to do that which is inconsistent with the welfare of society.

Every one has a right to claim protection from wrong doing on the part of others. The law which forbids wrong doing, furnishes this protection, if it be properly enforced. Security against wrong is an essential element of civil liberty. Sir James Mackintosh's definition of liberty is "security against wrong."

No man can claim the right to do wrong. He can claim freedom to do right. Now if he is permitted to do right in all things, and is restrained only from doing wrong, and is protected from wrong doing on the part of others, he has all the liberty he can ask.

A perfectly just and wise system of laws would forbid every thing that is unjust in society—every thing socially wrong, and would permit every thing just in society—every thing socially right. If such a system were carried into perfect execution, it would furnish perfect security against wrong, and perfect liberty to do right. The perfection of law would thus secure the perfection of liberty.

Liberty does not, as some suppose, consist in the privilege of self-government, nor is it necessarily the result of the privilege of self-government. Men having the privilege of self-government may govern themselves very badly. They may make unwise and unjust laws. Liberty, as we have seen, is the result of wise and just laws faithfully executed.

A despotic government may make and execute wise and just laws. If this were done, men would for the time being enjoy liberty. It may be asked, can a government be a despotic and a free government at the same time? Certainly not. A transient bestowal of liberty by a despotic government does not make that government a free government, any more than transient acts of charity by a miser make that miser a man of benevolence. In the case supposed there is no security for the continuance of liberty. Security against wrong, and not the transient absence of wrong, is essential to liberty.

Government is a means to an end. There are different kinds of government. That is the best government which is best adapted to secure the ends for which government is instituted. In determining what kind of government is best for a particular nation, the condition and circumstances of that nation should be carefully observed. The best form of government for the United States would not be the best form for Caffraria.

The different forms of government are classed under three heads; viz., Monarchy, Aristocracy, and Republic.

A monarchy is a government by a single person. "Monarch," says Worcester, "is a general term for one having sole authority, and is applied to the ruler of an absolute or limited monarchy, and he may be

styled a sovereign or potentate, and may have different titles. The following are the titles of the different monarchs of Europe; *Emperor, Czar,* or *Sultan,* the ruler of an empire; *King* or *Queen,* of a kingdom; *Prince,* of a principality; *Grand Duke,* of a grand duchy; *Duke,* of a duchy; and *Pope,* of the popedom."

Monarchies are absolute and limited. In an absolute monarchy all power is possessed by the monarch. His will is the sole law. An absolute monarchy and a despotism are the same.

An absolute monarchy, if the monarch be an able man, is a very efficient government. The power of a country can be more efficiently wielded by one mind than by many. Unity of counsel and promptness of decision cannot always be secured when several minds must act in concert. Republics have sometimes found it necessary to create a temporary dictator, that is, to clothe an officer with absolute power. The Roman republic had frequent recourse to this expedient in times of great public danger. For a time during the war of the Revolution, Washington was made a dictator in reality though not in name.

The absolute monarch is generally a tyrant. Men are too imperfect to be trusted with absolute power.

In **a limited monarchy,** the power of the monarch is limited by the constitution and laws. A constitution is a fundamental law defining and limiting

the powers of the government, to which law all other laws must be conformed. A constitution may be a written document, or it may consist of established usages. The constitution of Great Britain consists of established usages, yet its provisions are as well known as those of the constitution of the United States. In the limited monarchies of Europe, the powers of the monarch are, for the most part, as clearly defined as are those of the President of the United States.

Monarchies are hereditary, or elective. All the monarchies of Christendom have adopted the hereditary principle. The oldest surviving son or nearest heir succeeds to the crown as soon as the monarch dies. It is a maxim of the British constitution that "the king never dies." This means that the throne is never vacant. The moment the occupant dies, his heir is clothed with all the authority pertaining to the throne. In some countries, females are excluded from the succession.

An hereditary is preferable to an elective monarchy. It is true that, on the hereditary principle, an incompetent or vicious person may succeed to the throne. Experience has shown that the attendant evils are less than those connected with an election.

Aristocracy "is a form of government which places the supreme power in the nobles or principal persons of the State." The uniform testimony of history

declares the aristocratical form of government to be the worst form.

A republic is "that form of government in which the supreme power is vested in the people, or in representatives elected by the people." When the power is directly exercised by the people, the government is called a democracy. A pure democracy can exist only in a country of limited territorial extent. The colony of Plymouth was, for a time, a pure democracy. All the freemen met together to make laws. A law enacted in 1636 imposed a fine of three shillings sterling on every one failing to attend election, "without due excuse." When the population became so widely extended that it was inconvenient to meet in one body, the representative system was adopted.

In some of the governments of Christendom, the three forms above noticed are more or less blended. The English government is a limited monarchy, but in the House of Lords it has the aristocratical, and in the House of Commons the republican element. In that government, the power of the republican element has been gradually increasing.

CHAPTER IV.

THEORIES OF REPRESENTATION — REPRESENTATIVE INSTRUCTION—RELATION OF HUMAN TO DIVINE LAW—RIGHT OF REVOLUTION.

In a republic, the people elect representatives who make their laws. There are two theories of representation. The first, and commonly received theory, regards representation as a mere matter of convenience. It teaches that representatives are elected by the people because it is not convenient for them to meet in a body and make the laws.

The *doctrine of representative instruction,* which teaches that the representative is in all things to obey the will of his constituents, that he is to vote not according to his own judgment but according to the instructions of his constituents, is a logical inference from this theory of representation. If the representative is elected to do what the people would do, if it were convenient for them to assemble, then he is to do what the people tell him to do.

It is objected to this doctrine that it makes the

representative a mere automaton to register the decrees of a majority of his constituents. Suppose an important question comes before Congress relating to foreign affairs. A majority of his constituents wish him to vote for a measure which, from his superior means of information, he knows would be disastrous to the country. Now, if the representative must obey the will of his constituents, he must act contrary to his own judgment, and commit an act of folly, perhaps of wickedness. Though he have the capacity of John Marshall or of Daniel Webster, he must yield his convictions, the result of careful investigation and profound thought, to the will of men influenced, it may be, by their prejudices, or led by a crafty demagogue.

It may be asked, Ought not the will of the people to be obeyed? The will of the people should be obeyed when it is wise and right and constitutionally expressed. The people can act authoritatively in government matters, in this country at least, only by means of the ballot-box.

The people are not infallible. No individual is infallible. Hence no collection of individuals can be infallible. The voice of the people is not the voice of God. Many of the provisions of government are designed to prevent the hasty execution of the popular will—are designed to give an opportunity for that "sober second thought" which is more nearly allied

to wisdom. The doctrine of representative instruction goes far toward nullifying these provisions.

Another theory of representation regards the representative as a professional agent, who is chosen to do certain things according to his best ability; chosen to do them on account of his ability. The people are under obligation to have good laws. Hence they are under obligation to use the means best adapted to that end. Hence they select good and wise men to make their laws. They select them that they may have the benefit of their superior wisdom. Of course they must be allowed to exercise that wisdom unfettered by instructions. They should be restrained only by the constitution and the laws made in accordance with the constitution.

The duties of a legislator should be prescribed by the constitution; not by the leaders of a party, nor by a majority under the control of said leaders. The representative should conform to the wishes of his constituents, so far as he can do so consistently with fidelity to their interests and those of the country. A desire to please them should not cause him to neglect the duties he was chosen to perform.

A constitution is the fundamental law which determines the form of the government, and defines its powers. A State performs an original act of sovereignty when it establishes or abolishes a constitution. If a constitution comes in conflict with justice,

the grand constitutional law of the universe, it is null and void. The State cannot frame injustice into a fundamental law.

The powers of government are limited by the constitution. The government can do that only which the constitution authorizes it to do. The legislature has no power to make a law contrary to the constitution. A law so made would possess no authority. It would be declared null and void by the tribunal authorized to do so by the constitution.

No individual is authorized to say, This law is unconstitutional and therefore not binding ; I will not obey it. He is under obligation to obey every law (excepting those contrary to the law of God) until the authorized tribunal has decided that it is unconstitutional. Then it is null and void.

Government cannot rightfully do any thing contrary to the constitution, even though all the people were to desire it. The will of the people is supreme only when it is right and constitutionally expressed. The people can change their constitution, but only in the mode pointed out by the constitution.

Constitutions should not be changed for slight causes. It is better to suffer some inconveniences than to lessen, by frequent changes, the reverence felt for the constitution. If constitutions could be changed as easily as ordinary laws, they would have no more value than ordinary laws.

Constitutional law is the highest human law. The law of God is higher than all human law. If any part of the constitution, or if any law made in pursuance thereof, is contrary to the law of God, it is null and void. "We ought to obey God rather than men." (Acts v. 29.) Government or the law can render that obligatory which was not previously obligatory, but it cannot change moral distictions. It cannot authorize one to do wrong. It cannot nullify the law of God.

Questions relating to a conflict of the law of the land with the law of God, must be decided by each one for himself. There is no divinely authorized tribunal for the decision of such questions. "Every one of us shall give account of himself unto God" (Rom. xiv. 12). He must learn his duty for himself and do it. He must avail himself of all the assistance within his reach, but he must decide for himself. He cannot throw the responsibility of decision on the church or on the government.

This will not, as some suppose, lead to anarchy. Some think that, for every one to decide for himself whether a law is contrary to the divine law or not, and to obey or disobey according to his decision, is to make obedience to law optional. One man, say they, will regard one law as conflicting with the divine law, and another will regard another law as conflicting. Thus every one will do that which is right in his own eyes.

No such consequences will follow the proper exercise of the right of private judgment in regard to duties connected with obedience to law. Suppose the question to arise, Does this law come in conflict with the law of God? does it enjoin what God has forbidden? If the conscientious man, on full consideration, comes to the conclusion that the law does enjoin what God has forbidden, he will not obey it, but he will submit without resistance to the penalty attached to disobedience. He thus does not set the law at defiance. He yields a passive obedience by submitting to the penalty. When every law is thus obeyed, either actively or passively, there is no danger of anarchy.

Governments originating in fraud or violence may become legitimate, and may rightfully claim obedience. When they have become established and fulfil the ends of government as well as any government which it might be possible to establish, it is the duty of the people to obey those governments. It is certainly their duty to obey the government they are under, till they can lawfully establish a better one in its place. A government may have no right to command, and yet it may be the duty of the people to obey till there is a fair prospect that they can overthrow the government, and substitute a better one in its place, with less suffering than continued obedience would occasion.

Every act of injustice on the part of the government does not absolve the citizen from his obligation to obedience. Every act of oppression does not justify forcible resistance to the government. There is a right of revolution; that is, there are times when it is right for a people to forcibly overthrow the government. These times cannot be accurately defined. The exact amount of oppression which justifies a revolution cannot be gauged and measured. It must be well-nigh intolerable, and there must be a fair prospect that a revolution will be successful. No amount of oppression would justify an attempt at revolution when there was no prospect of success. The attempt would only occasion greater suffering. The worst kind of government is better than anarchy; that is, the worst kind of government is better than no government. Anarchy is always followed by military despotism.

CHAPTER V.

COLONIAL GOVERNMENT—CONTINENTAL CONGRESS—REVOLUTIONARY GOVERNMENT.

The colonial government had a powerful influence in educating the American people for self-government.

The first representative Legislature in America sat in Virginia in 1619. Up to that time the people of that colony were governed by a governor and council appointed by the crown. As subjects of the king, and entitled to all the privileges of British subjects, they claimed the right to be represented in the government. The governor, Sir George Yeardly, called a general assembly of the representatives of the various plantations, and permitted them to act as a legislature.

The Pilgrim Fathers, while on board the May Flower, at Cape Cod, drew up the following compact: "In the name of God, amen. We whose names are underwritten, the loyal subjects of our dread sovereign lord King James, by the grace of God of Great Britain, France, and Ireland, King, Defender of the Faith, &c. Having undertaken, for the glory of God and the ad-

vancement of the Christian faith, and the honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia, do, by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof, do enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and officers, from time to time, as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience. In witness whereof, we have hereunto subscribed our names, at Cape Cod, the eleventh of November, in the reign of our sovereign lord King James, of England, France, and Ireland, the eighteenth, and of Scotland the fifty-fourth, Anno Dom. 1620."

This was signed by John Carver, William Bradford, Edward Winslow, William Brewster, Isaac Allerton, Miles Standish, John Alden, and thirty-four others.

Under this compact they elected a governor and an assistant annually. Subsequently the number of assistants was increased to seven. "The supreme legislative power resided in and was exercised by the whole body of the male inhabitants, every freeman who was a member of the church, being admitted to vote in all public affairs." This continued till 1629, when the

settlements had become so widely extended that it was inconvenient for the people to assemble for purposes of legislation. The representative system was then adopted.

They thus continued to govern themselves till 1684, when an arbitrary government was established over them, in common with the other New England colonies. In 1691, the colony of Plymouth was joined to that of Massachusetts by the charter granted by William and Mary.

The colony of Massachusetts was planted under the auspices of a corporation or company in England. This company had power to elect a governor, and make rules for the regulation of the colony. Thus the government of the colony was in England. It was ere long agreed that the powers of the company should be transferred to the colony. Accordingly such persons as it was known designed to emigrate to the colony, were chosen officers. The charter provided that the government should be administered by a Governor, Deputy Governor, and eighteen assistants, elected out of the freemen of the company. By freemen of the company were meant the members of the company. Full legislative authority was given by the charter, only the laws passed must not be contrary to the laws of England.

The officers chosen as above noticed came to America and brought the charter with them. Thus

the colony of Massachusetts possessed the power to elect all its rulers and to legislate in regard to all matters, provided the legislation was not contrary to that of England.

The governments of all the colonies were similar in that each had a governor, a council which constituted the upper house of the legislature, and a lower house elected by the people. There were, however, differences in their organization so great that Blackstone divided them into three classes, the Provincial, the Proprietary, and the Charter Governments.

In the Provincial Governments, the king appointed the governor, and gave him his instructions or powers. The king also appointed a council to assist the governor and to form the upper house of a legislature, when the governor summoned an assembly of representatives of the freeholders and planters. The governor had a negative on all the proceedings of the legislature, and could prorogue or dissolve them at pleasure. The legislature had authority to make local laws not contrary to the laws of England. All such laws were subject to ratification or disapproval by the crown. The governor and council had power to establish courts and appoint judges, to raise troops for defence, and to exercise martial law in time of invasion, war, and rebellion. All real power was thus in the hands of the king, or of those holding office at his will.

The Proprietary Governments differed from

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the provincial chiefly in this, that the proprietary sustained toward the government and people a relation similar to that of the king in the provincial governments. The governor was appointed by the proprietary, and the legislatures assembled under his authority.

In short, the proprietary exercised *most* of the powers which in the provincial governments belonged to the crown.

The Charter Governments were those whose form and powers were defined by the charters granted by the king. A charter was to a colonial government, what a constitution is to a state government. In the original structure of the charters of the early colonies, no provision was made for a legislative body; but the colonists, claiming all the rights and privileges of Englishmen, insisted on being represented in the government. The consequence was, that in every colony there was a legislature modelled upon that of the mother country.

It is true that in many cases the actual power possessed by the people, or their representatives, was very small. The English government did not know that the forms of liberty would bring the reality. The people were rendered familiar with elections, and with legislative and judicial proceedings. Hence, when the authority of the king was thrown off, they were prepared at once to replace such portions of the

machinery of government as were removed by that act. Hence there was no interregnum—no anarchy. Had it been the design of the English ministers to train the colonists to the exercise of independence, they could not have chosen a better course than the one pursued.

The colonies were separate and independent of each other. They were united only in a common relation to the crown and mother country. Still, they were in many respects one people, and prepared to become so in all respects. Being fellow-subjects of the king, each colonist could inhabit every other colony, and inherit property in every other colony.

As the colonists were entitled to all the privileges of Englishmen, they insisted that they could not be taxed without their consent—that taxes must be laid by the colonial assemblies. The denial of the power of taxation to parliament soon led to the denial of all power to legislate for the colonies. Massachusetts led the way in denying that parliament had any power over the colonies. Allegiance to the crown was admitted ; subjection to parliament denied.

On the other hand, parliament claimed supreme power over the colonies, and proceeded to exercise that power by passing laws for raising a revenue in the colonies. A stamp act was passed. It required the colonist to use stamped paper for all legal documents. Stamped paper could be bought of the gov-

ernment only. The act created great excitement among the colonists, and was soon repealed.

The attempt made to raise a revenue by imposing duties on articles imported, met with similar and even more determined opposition. Remonstrances and appeals to the king and parliament being without effect, Massachusetts recommended the assembling of a Continental Congress to deliberate on the state of affairs. The recommendation was adopted by the colonies. Delegates were chosen in some cases by the lower houses of the legislatures, and in other cases by conventions of the people. This congress met in Philadelphia, Sept. 4, 1774. In this congress a rule was adopted which was adhered to till the adoption of the Federal Constitution. The rule gave to each colony one vote on questions coming before congress. This congress adopted a Declaration of Rights, and addresses to the people of England and of the neighboring colonies, and to the king, setting forth their grievances and claims for redress.

A second congress assembled in May, 1775. The delegates were chosen partly by the popular branches of the legislatures, and partly by conventions of the people.

This congress took measures for raising an army, and appointed Washington commander-in-chief. They authorized the emission of two million dollars in bills of credit, and published a solemn declaration of the

causes of their taking up arms, an address to the king, and an address to the people of Great Britain. On July 4, 1776, they declared independence of Great Britain.

From this time if not before, *Congress assumed the powers of a national government* by the general consent of the people of the colonies. It assumed power to declare war and make peace, to authorize captures, to control military and naval operations, to form alliances and make treaties, to contract debts and to issue bills of credit on the faith of the nation.

It is true that the acts of Congress for the most part were in the form of recommendations, yet they had all the authority of laws.

This government by the Continental Congress has been called the Revolutionary government, in distinction from the government of the Confederation. Till the articles of confederation were adopted, the Continental Congress exercised the powers of a national government.

CHAPTER VI.

THE CONFEDERATION.

Our revolutionary fathers intended to form a government for the United States, as soon as they had declared them to be independent of Great Britain. On the 11th day of June, 1776, the day on which the committee for preparing the Declaration of Independence was appointed, Congress appointed a committee to prepare and digest a form of Confederation to be entered into by the colonies about to become independent States. This committee consisted of one member from each colony.

In about a month, the committee reported a draft which was debated for several days, and on the 20th of August, Congress, in committee of the whole, reported a new draft, which was ordered to be printed for the use of the members. When the articles of Confederation were agreed upon in Congress, a circular was addressed to the legislatures of the several States, requesting them to authorize their dele-

gates in Congress to subscribe to the Articles of Confederation in behalf of the States. The Articles were not to be binding till they were ratified by all the States. This ratification did not take place till March, 1781, nearly five years after the Declaration of Independence.

The articles were called "*Articles of Confederation* and perpetual union between the States." It was not designed to form a national government, but a league of friendship. The second article declares, "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled"; and the third article, "The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties and their mutual and general welfare."

Thus it appears that the Confederation was designed to be merely a league between the States, and not a national government.

Provision was made for a Congress as follows:

"For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November in every year, with a power reserved to each State to recall its delegates,

or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

"No State shall be represented in Congress by less than two, nor by more than seven members, and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

"Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

"In determining questions in the United States in Congress assembled, each State shall have one vote."

It will be observed that the Congress of the Confederation, like the Revolutionary Congress, consisted of only one House; that the members were chosen by the legislatures of the States; that they were chosen for a year, but might be recalled at any time if the legislature saw fit to do so; that the salaries of the members were paid by the States appointing them, and that the method of voting was by States—each State having one vote. A majority of the delegates from a State determined the vote of that State. If they were evenly divided on a question, the vote of the State was lost.

The States were upon a footing of perfect equality. Delaware had in Congress as much power as Pennsylvania or Virginia.

The following were the principal *powers possessed by Congress:* "The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace or war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces, in the service of the United States, shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of capture, provided that no member of Congress shall be appointed a judge of any of the said courts.

"The United States in Congress assembled shall also have the sole and exclusive right and power of

regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated; establishing and regulating post-offices from one State to another throughout all the United States, and exacting such postage on the papers passing through the same as may be sufficient to defray the expenses of said office; appointing all the officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the land and naval forces, and directing their operations; to appoint one of their number to preside, provided that no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills of credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon

the number of the land forces, and to make requisitions from each State for its quota in proportion to the number of white inhabitants in such State, which requisition shall be binding."

It thus appears that though the Confederation was designed to be a league, a number of powers appropriate to a general government were conferred upon Congress. But these grants of power were fettered by a condition which rendered the most important of them practically useless. None of those important powers could be exercised without the consent of nine States, as appears from the following:

"The United States in Congress assembled shall never engage in a war; nor grant letters of marque and reprisals in time of peace; nor enter into any treaty or alliances; nor coin money, nor regulate the value thereof; nor ascertain the sums and expenses necessary for the defence and welfare of the United States or any of them; nor emit bills; nor borrow money on the credit of the United States; nor appropriate money; nor agree upon the number of vessels to be built or purchased, or the number of land or sea forces to be raised; nor appoint a commander-in-chief of the army or navy; unless nine States assent to the same."

Measures of the utmost importance often failed in Congress in consequence of this provision requiring the assent of nine States, instead of a majority.

Congress was also to decide on appeal all disputes arising between the States, and to appoint a committee to act during the recess of Congress. The debts contracted by the Revolutionary Congress were declared to be good against the Confederation, and the public faith was solemnly pledged for their payment. No alterations could be made in the Articles of Confederation unless agreed to in Congress, and afterward confirmed by the legislature of every State.

Such prohibitions were laid on the States as it was thought would prevent them from interfering with the exercise of the powers conferred upon Congress.

The Articles of Confederation made no provision for a judiciary. Congress could establish courts for determining the lawfulness of capture at sea, but it had no power to erect civil tribunals. The only courts in existence under the Confederation were State courts.

The Confederation had great defects, which soon appeared in its practical operation. Congress had no power to execute its laws—no exercise of authority. Whether their measures were carried into execution, or not, depended upon the legislatures of the States. Washington wrote: "The Confederation seems to me to be little more than a shadow without the substance; and Congress a nugatory body, their ordinances being little attended to."

Congress had no power to lay taxes and collect

revenue. They could apportion the sums needed among the States, but if any State did not see fit to furnish its portion, there was no help for it. There are on record many instances of neglect; Congress was often without funds to carry on the war and meet the public engagements.

Congress had no power to regulate commerce, foreign or domestic. Each State had power to regulate commerce within its own limits. In consequence, there were no uniform regulations. Our foreign commerce was subject to such regulations as foreign nations chose to make, since Congress had no power to make, in case of injury, retaliatory regulations. The result was the ruin of our navigation, and great injury to all the interests connected with it.

There were not wanting statesmen who saw at the outset the defects of the Confederation, and labored to correct them, but State jealousies prevented the granting to Congress of the powers necessary to an efficient government.

After the close of the war, the stimulus of danger being removed from the States, the defects of the Confederation were more fully developed. The treaties entered into by Congress were disregarded by some of the States; the sums required to be paid into the treasury were not paid. The entire prostration of public credit, the dissensions among the States, and the utter neglect with which the resolves of Congress

were treated, threatened the most alarming consequences. The time seemed rapidly approaching when, to use the language of Washington, it would be a subject of "regret that so much blood and treasure have been lavished for no purpose, that so many sufferings have been encountered without compensation, and that so many sacrifices have been made in vain."

CHAPTER VII.

FORMATION OF THE CONSTITUTION.

In view of *the defects of the Confederation,* the necessity of a stronger government was apparent to most of the leading statesmen of the day. Quite a number were active and earnest in preparing the public mind for a change, but the two most prominent were James Madison and Alexander Hamilton.

Madison was the first to make a public movement in the right direction. In the spring of 1784 he became a candidate for a seat in the Legislature of Virginia, that if elected, he might influence that body to take some measures toward giving the country a government that would secure the freedom which had been so dearly purchased. He was elected, but found it difficult to make the desired impression. He found the majority exceedingly averse to any measures having a tendency to transfer power from the State to the United States.

He finally, after about two years' labor, succeeded

in causing the legislature to pass the following resolution :

"*Resolved,* That Messrs. Randolph, Madison, Jones, Tucker, and Lewis, be appointed Commissioners, who, or any of whom, shall meet such Commissioners as may be appointed by other States in the Union, to take into consideration the trade of the United States, to consider how far a uniform system in their commercial regulations may be necessary to their common interests and permanent harmony, and to report to the several States such an act relative to this great object as when unanimously ratified by them, will enable the United States effectually to provide for the same."

By the articles of confederation Congress could not impose a tariff for revenue or for the protection of domestic industry. The evils resulting from this lack of power had been so numerous and palpable, that Madison succeeded in securing the votes of a majority of his fellow legislators to the resolution above given. Had he proposed to them the formation of a new government, the plan of which was already clearly defined in his own mind, the proposition would doubtless have been voted down by an overwhelming majority. He knew the men with whom he was dealing, and proceeded with the caution of wisdom.

Randolph, Tucker, and Madison attended the convention which met at Annapolis in September, 1786. Very little interest in the movement was felt by the

people. Only five States were represented in the convention; viz., New York, New Jersey, Pennsylvania, Delaware, and Virginia.

Connecticut, Maryland, South Carolina, and Georgia did not appoint delegates. New Hampshire, Massachusetts, Rhode Island, and North Carolina appointed delegates, but they failed to attend the convention.

The friends of the Union as it ought to be, were everywhere active in urging the necessity of a reform. They seldom, if ever, advocated anything more than such an amendment of the Articles of Confederation as would enable Congress to conduct national affairs in an efficient manner. Their arguments, assisted by the logic of events, began to have a perceptible influence on the public mind. During the interval between the appointment of delegates to the convention and the time of its meeting, there was an evident advance of public opinion in the desired direction. In consequence of this, the convention, under the lead of Madison and Hamilton, declined to enter upon the limited task assigned it, and recommended to Congress to call a convention with powers adequate to the occasion. The report containing this recommendation was drawn up by Alexander Hamilton. It proposed the appointment by the States, of commissioners to meet in Philadelphia, "to take into consideration the state of the United States, to devise

such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union, and to report such an act for that purpose to the United States, in Congress assembled, as when agreed to by them and afterwards confirmed by the legislatures of every State, shall effectually provide for the same."

This recommendation was first acted upon by the legislature of Virginia, by whom it received an unanimous approval. New York was the next State that moved in the matter. The legislature instructed its delegation in Congress to move a resolution recommending to the States the appointment of delegates to meet in convention for the purpose of proposing amendments to the Articles of Confederation.

On the 29th of February, 1787, a resolution was moved and carried in Congress, recommending a convention to meet in Philadelphia in May ensuing. Delegates were in due time appointed by all the States except Rhode Island.

The 14th of May was the day appointed for the opening of the convention. As only a small number of the delegates had arrived on that day, the convention did not open till the 25th of May. There were then present twenty-nine delegates from nine States. Other delegates soon came in till the whole number was fifty-five. This assembly is known in history

as the Federal Convention—the convention which framed the Federal Constitution. It embodied as large an amount of patriotism, talent, and wisdom as was ever assembled in this or in any other land. There were Washington, and Hamilton, and Madison, and Franklin, and King, and Sherman, and Ellsworth, and Pinckney, and Livingston, and Robert Morris, and Gouverneur Morris, and Dickinson, and Wilson, and many others scarcely less distinguished for talent and public services. If these men fail in their solemn efforts, what can be expected from human wisdom?

Mr. Madison, who was not absent a single day from the debates of the convention, says of its members: "I feel it my duty to express my profound and solemn conviction, derived from my intimate opportunity for observing and appreciating the views of the convention, collectively and individually, that there never was an assembly of men charged with a great and arduous trust, who were more pure in their motives, or more exclusively and anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787 to the object of devising and proposing a constitutional system which should best supply the defects of that which it was to replace, and best secure the permanent liberty and happiness of their country."

Robert Morris, in behalf of the delegation from Pennsylvania, nominated Washington as the presiding

officer of the convention. Franklin would have made the nomination, but was prevented by ill health from being present. Franklin was the only man in the convention besides Washington, who could be supposed to have any claims to the chair. Washington was unanimously chosen.

The convention adopted as one of its rules, "That nothing spoken in the house be printed or otherwise published or communicated without leave." Thus the proceedings of the convention were secret. Mr. Madison perceiving the interest which posterity would take in said proceedings, made a daily record of the same. This record was carefully preserved, and, after his death, published by order of Congress. We have thus a tolerably full report of the daily progress of the convention in forming the Constitution of the United States.

Mr. Randolph, of Virginia, opened the main business of the convention by a speech, in which he set forth the defects of the Confederation, and then offered fifteen resolutions which were designed to furnish materials for the action of the convention. These resolutions embodied the outlines of a plan of government of which we find notices in the previous correspondence of Madison with Washington, Jefferson, Randolph, and others. It is fair, therefore, to infer that the plan of government presented by Randolph in his fifteen resolutions originated with Madison.

The following is a brief outline of the plan: It proposed a *National Government* with a division of powers into the legislative, judicial, and executive departments. It will be remembered that the Articles of Confederation made no provision for judicial and executive departments.

It proposed that *the national legislature* should consist of two branches, the members of the first branch to be elected by the people of the several States—the members of the second branch to be elected by the first branch out of a proper number nominated by the State legislatures.

It proposed that the national legislature have power to legislate on all matters of national interest, and in all cases in which the States were incompetent to legislate, and that the national legislature have a negative on all State laws contravening the articles of union, and that the right of suffrage in the national legislature be proportioned to the quota of contribution to national expenses, or to the number of free inhabitants. This would have deprived the small States of their equality with the large States, and would have given no place to slave representation. From the outset, Madison designed to form a free constitution.

It proposed that there should be a national judiciary, to consist of one or more supreme tribunals

and inferior ones, and that the national executive be chosen by the national legislature.

It proposed that provision be made for the *admission of new States* to the Union, and that a republican form of government be guaranteed to each State, and that the legislative, judicial, and executive powers of the several States be bound by oath to support the Articles of Union.

All the above features are, with some modifications, contained in the constitution. There was one which was not adopted. It proposed that there should be a council to decide on the constitutionality of laws—that the national executive, with a convenient number of the national judiciary, should compose a council of revision to examine every act of the national legislature before it should go into operation, and every act of a State legislature before the veto on it should be final. The power of deciding the constitutionality of laws is by the constitution conferred on the Supreme Court.

Such was *the plan of government* presented to the convention by the resolutions offered by Mr. Randolph. They were referred to the Committee of the Whole on the state of the Union. Mr. Charles Pinckney, of South Carolina, then presented a plan of government possessing supreme legislative, executive, and judicial powers. This was also referred to the Committee of the Whole.

The resolutions of Mr. Randolph were debated from day to day in the Committee of the Whole, till the 13th of June—nearly three weeks—when the committee reported to the convention nineteen resolutions, founded upon those proposed by Mr. Randolph. Of these nineteen resolutions, the first that was passed was the following: "*Resolved*, That a national government ought to be established, with a supreme legislative, executive, and judiciary."

When the convention assembled, a large majority of its members supposed that the only work before them was that of amending the Articles of Confederation: but the discussions that took place soon convinced a majority that a change of system was necessary, and hence they voted, not that the Articles of Confederation ought to be amended, but that a national government ought to be formed. From that time forward they addressed themselves to that work. Madison, Hamilton, and other prime movers in calling the convention, had from the first the formation of such a government in view.

These nineteen resolutions, which received the votes of the majority of the convention in the Committee of the Whole, embraced the outlines of the following plan of government: viz., a national legislature to consist of two branches, the first branch or lower house to be elected by the people for three years; the second or upper house to be elected by the

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State legislatures for seven years; the legislature to have powers superior to those of the confederation; the suffrage in the legislature to be according to the number of free persons and three-fifths of other persons; the national executive to be chosen for seven years, and to be ineligible for a second term, with power similar to those now possessed by the President of the United States; a national judiciary, with suitable powers; the whole plan to be submitted to assemblies chosen for the express purpose of ratifying or rejecting it.

Some progress had thus been made, not in amending the Articles of Confederation, not in forming a league between the States, but in *forming a government for the United States.* This progress was made not without great difficulty. There were some influential men in the convention who clung to the old Confederation, and were unwilling that any considerable increase of power should be given to the government of the Union. The small States were unwilling to surrender the equality of suffrage which they enjoyed under the Confederation. But by patient and able discussion, forbearance, and concession, progress was made. Resolutions were offered, debated, postponed, called up again, passed, reconsidered, amended, and again perhaps postponed, and others proposed in their place, till at length the majority agreed upon the nineteen resolutions. This was on the 13th of June

On the 15th of June, Mr. Patterson, of New Jersey, laid before the convention a plan which he and some others wished to have substituted for the one embodied in the nineteen resolutions. His plan proposed that the Articles of Confederation be revised, that the powers of Congress be enlarged in respect to the revenue and the regulation of commerce, that Congress appoint an executive with power to execute the Federal Acts, that a Federal Judiciary be established, and that the Acts of Congress in accordance with the Articles of Confederation and treaties made and ratified under the authority of the same, be the supreme law of the land.

The resolutions of Mr. Patterson were referred to the Committee of the Whole, to which committee the nineteen resolutions were again referred.

The two plans were now fairly before the convention. It was admitted that the one aimed at perpetuating a league between the States; that the other aimed at forming a national government acting upon individuals. "The true question," said Mr. Randolph, "is whether we shall adhere to the Federal plan, or introduce the national plan. A national government alone properly constituted will answer our purpose."

The debate on these two sets of resolutions continued for four days, when the committee reported the nineteen resolutions without alteration. The conven-

tion voted by States, each State having one vote. The votes on this occasion were as follows : For the national plan, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia—seven States.

For the league plan, New York, New Jersey, and Delaware—three States. The vote of Maryland was divided.

Messrs. Yates and Lansing, delegates with Hamilton from New York, cast the vote of that State in opposition to the well known views of their colleague.

It was during this debate that Hamilton for the first time addressed the convention, and gave the outline of a plan of government which he would like to see adopted. "He did not mean," he said, "to offer the paper he had sketched as a proposition. It was meant only to give a more correct view of his ideas, and to suggest the amendments he should probably propose to the plan of Mr. Randolph, in the proper stages of its future discussion." The following is a very condensed view of his plan :

The supreme legislative power to be vested in an assembly and senate ; the members of the assembly to be chosen by the people for three years; the members of the senate to be chosen by electors chosen by the people ; senators to serve during good behavior.

The supreme executive authority to be vested in a governor, to serve during good behav-

ior; his election to be made by electors chosen by the people. The governor to have an unqualified veto on all the acts of the legislature, to have the sole appointment of the heads of departments, and to have the nomination of all other officers subject to the advice and consent of the Senate.

The Senate to have the sole power of declaring war, and of advising and approving treaties.

A national judiciary to be instituted, the judges to hold office during good behavior.

The governors of each State to be appointed by the General Government, and to have a negative on all the acts of the State legislatures.

All the laws of the States contrary to the Constitution and laws of the United States to be null and void.

The convention had now, after much discussion and with great difficulty, decided on forming a constitution for a National Government. Much as they had done, they had only made a beginning. To agree upon the details of the general plan was found to be difficult—well-nigh impossible.

In view of these difficulties, Franklin proposed that prayer should be resorted to, and prefaced his proposal with the following remarks:

"In the beginning of the contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the divine protection. Our prayers

sir, were heard, and they were graciously answered. All of us who were engaged in the struggle, must have observed frequent instances of a superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity, and have we now forgotten that powerful friend? Or do we imagine that we no longer need His assistance? I have lived, sir, a long time, and the longer I live, the more convincing proofs I see of this truth, THAT GOD GOVERNS IN THE AFFAIRS OF MEN. And if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sir, in the sacred writings, that except the Lord build the house, they labor in vain that build it. I firmly believe this, and I firmly believe that without His concurring aid, we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial, local interests, our projects will be confounded, and we ourselves shall become a reproach and by-word down to future ages. And what is worse, mankind may hereafter from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war and conquest. I therefore beg leave to move, that henceforth prayers, imploring the assistance of Heaven, and its blessing on our deliberations, be held in this assembly every morning before

we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service."

Washington said, in a letter to a friend, "I almost despair of seeing a favorable issue to the proceedings of the convention, and I do therefore regret that I have had any agency in the business." This was written by one who, during the long, dark hours of the Revolution, never despaired of the republic. The danger of failure in constructing our government must have been very great.

By the wise and conciliatory course pursued by the leaders of the convention, it was kept together, and the debates continued till the twenty-third of July, when the majority had come to an agreement as to the leading provisions of the Constitution in process of formation. Mr. Gerry, of Massachusetts, then moved "that the proceedings of the convention for establishing a national government (excepting that part relating to the executive) be referred to a committee to prepare and report a constitution conformable thereto." Messrs. Rutledge, Gorham, Randolph, Ellsworth, and Wilson were appointed on this committee of detail.

Three days afterwards, the proceedings of the convention respecting the executive were referred to the same committee. The convention then adjourned till the sixth of August, that the committee might have time to prepare and report a constitution.

On the sixth of August the committee of detail reported a constitution of twenty-three articles. These articles embodied the substance of the resolutions which had been adopted by the convention. This report was on the seventh referred to the Committee of the Whole. It was then debated article by article about four weeks. During these debates many amendments and modifications were made.

On the eighth of September, a committee was appointed to revise the style and arrange the articles which had been agreed upon. This work of revision and arrangement was mainly performed by Gouverneur Morris. On the twelfth of September, the committee reported the constitution as revised and arranged, together with the draft of a letter to Congress.

The Constitution was still before the convention, and the debates continued till the seventeenth of September, when the last amendment was made at the suggestion of Washington. The Constitution, as reported, declared that "the number of representatives shall not exceed one for every forty thousand. This had occasioned great discussion. On Mr. Gorham's moving to strike out forty and insert thirty thousand, Washington remarked: "That although his situation had hitherto restrained him from offering his sentiments on questions depending in the house, and, it might be thought, ought now to impose silence upon him, yet he could not forbear expressing his wish that

the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of representatives had been considered by many members of the convention as an insufficient security for the rights and interest of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan, and late as was the present moment for admitting amendments, he thought this of so much consequence that it would give him great satisfaction to see it adopted." The amendment was agreed to unanimously. The above were the only remarks made by Washington in the convention.

On the 17th of September, the Constitution, as finally amended, was signed by all the members of the convention except Messrs. Randolph and Mason, of Virginia, and Mr. Gerry, of Massachusetts. Probably there was not a single member who was fully satisfied with it, yet, with the above-named exceptions, they gave it their signatures and support, believing it to be the best that could be obtained.

Previous to signing it, Dr. Franklin remarked: "I confess there are several parts of the Constitution which I do not at present approve, but I am not sure that I never shall approve them; for having lived long, I have often been obliged by better information or by fuller consideration, to change opinions even on im-

portant subjects." "I doubt whether any other convention we can obtain may be able to make a better constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests and selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me to find this system approaching so near to perfection as it does. I consent to the constitution because I expect no better, and because I am not sure it is not the best."

Hamilton remarked: "No man's ideas are more remote from the plan than my own are known to be; but is it possible to deliberate between anarchy and convulsion on one side, and the chance of good to be expected from the plan on the other?" His concluding remark was, "It is the best the present situation and circumstances of the country will permit."

CHAPTER VIII.

ADOPTION OF THE CONSTITUTION.

When the *Constitution was completed and signed* by the members of the convention, it was laid before Congress—the Congress of the Confederation. Congress referred it to the legislatures of the several States, who called conventions chosen by the people to adopt or reject it.

When the Constitution was published and spread before the people, it met with vigorous opposition from mistaken patriots and selfish politicians. Among the former were such men as Patrick Henry, of Virginia, and Samuel Adams, of Massachusetts—men whose honesty and love of country were beyond the shadow of a doubt. They knew that men who possessed power were liable to abuse it—that history was filled with examples of the abuse of power. Hence they were unwilling to trust the General Government with the powers conferred upon it by the Constitution. They thought the only safeguards of liberty lay in

each State retaining nearly all the powers which properly belong to an independent nation. This could not be, if the Constitution and laws of the United States were to be "the supreme law of the land."

They saw in the *President of the United States* a disguised king; and this would probably have prevented the adoption of the Constitution, had it not been regarded as certain that Washington would be the first President. All honest men felt that power in his hands would be safe. Probably the character of Washington had more to do with the adoption of the Constitution, than the arguments that were urged in favor of its provisions.

The ablest men of the country employed their pens in explaining and defending the Constitution. Foremost among these were James Madison, Alexander Hamilton, and John Jay. The articles published by them in the public papers under the title of the "Federalist," constitute a most interesting and able commentary on the Constitution. We have in it the interpretation of the Constitution by its framers, who were fully competent to tell us what they meant to do.

The people of the United States were divided into two parties; viz., those who favored and those who opposed the adoption of the Constitution. The former were called Federalists, and the latter Anti-Federalists.

The conventions called by the State legislatures to

consider the Constitution, met at different times in different States. The convention of Delaware adopted the Constitution Dec. 7, 1787; Pennsylvania adopted it Dec. 12, 1787; New Jersey, Dec. 18, 1787; Georgia, Jan. 2, 1788; Connecticut, Jan. 9, 1788; Massachusetts, Feb. 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, July 26, 1788; New York, July 26, 1788.

Delaware, New Jersey, and Georgia adopted the Constitution unanimously; Pennsylvania, Maryland, and South Carolina by large majorities; Massachusetts, New York, and Virginia by small majorities.

In the Pennsylvania convention, the task of explaining and defending the Constitution devolved upon Mr. Wilson, a prominent member of the Federal Convention. Washington said that he was "as honest, candid, and able a member as the convention contained."

Wilson was requested by the Pennsylvania convention to explain the meaning of the different parts of the constitution. He was thus led to take a view of its leading provisions, and the reasons in support of them. His speeches constitute one of the best commentaries on the Constitution that have appeared. His acquaintance with the science of government was quite equal to that of Hamilton. After the adoption of the Constitution, Washington appointed him one

of the Judges of the Supreme Court of the United States.

The fate of the Constitution in Massachusetts was for a long time considered doubtful by its friends. The people of that State were accustomed to annual elections, and the frequent return of power into their own hands. They were afraid that the power given by the Constitution to the General Government would prove destructive to their liberties.

The convention contained three hundred and fifty-five members; among them were a score or more ministers of the gospel. Nearly all of these came to the convention opposed to the Constitution. Having listened to the discussions that took place, they with but one or two exceptions voted in favor of it.

The celebrated John Hancock was chosen president of the convention. It was voted that the convention open daily with prayer, and that they consider each article of the Constitution in order, and that each member have an opportunity of expressing his views on each part before the vote to adopt or reject should be taken. This course of proceeding saved the Constitution. In course of the free and full discussion it allowed, the opinions of many who came into the convention strongly opposed to the Constitution, were changed. The arguments and appeals of such men as Fisher Ames, Rufus King, Dana, Parsons, and others, had weight with the members, and when the

vote was taken, the Constitution was ratified by a majority of nineteen.

The bearing of those who were outvoted is worthy of notice. Some who had made strenuous opposition throughout all the sessions of the convention, arose when the vote for adoption was declared, and said that they would now give to the Constitution their hearty support. For example, one said: "I have been opposed to the adoption of the Constitution, yet as a majority has seen fit to adopt it, I shall use my utmost endeavors to induce my constituents to live in peace under it, and cheerfully submit to it."

The Virginia convention met on the second day of June, 1788. The ablest men of Virginia were members of it—Madison, Marshall, Henry, Pendleton, Wythe, Randolph, Mason, Monroe, and others.

Henry took strong ground in opposition to the Constitution, and was supported by Mason, James Monroe, and many others. Madison, Marshall, Randolph, Pendleton, Nicholas, and others defended the Constitution, and urged its adoption. It was adopted by a small majority. Henry, like a true patriot as he was, became one of its warmest friends and supporters.

The New York convention assembled at Poughkeepsie, June 17, 1788. George Clinton, who was an opponent of the Constitution, was chosen president. The convention was opened every morning with

prayer. The supporters and opponents of the Constitution were very nearly equal.

The leading advocates for adoption were Chancellor Livingston, Alexander Hamilton, and John Jay. The vote to adopt was carried by a majority of four.

The convention of North Carolina rejected the Constitution. Rhode Island refused to call a convention to consider the question.

In several of the conventions, it was proposed to ratify the Constitution, on condition that certain specified amendments were made. Madison was consulted, and gave it as his opinion that the ratification could not be conditional. The ratification was finally in all the States unconditional, and the desired amendments were strongly recommended. The most important of these desired amendments were recommended by two-thirds of the first Congress under the Constitution, and having been ratified by the legislatures of three-fourths of the States, became a part of the Constitution.

The Constitution declared, that when nine States had adopted it, it should be binding on those States. When the ratifications of nine States had been received by Congress, they were referred to a committee to examine them, and to report an act putting the Constitution into operation. This was on the 2d of July, 1788.

On the 14th of July such an act was reported, but it was not adopted till the 13th of September. Elec-

tions for officers of the new government were directed to be held in January, 1789, and the first Wednesday in March was designated as the time for commencing operations under the Constitution.

Washington was unanimously elected President, and John Adams Vice-President. Elections for members of the House of Representatives were held by the people, and for the Senate by the legislatures of the States. Congress was to meet, and the new government to be inaugurated in the city of New York.

The time appointed was the first Wednesday in March; but a quorum of both houses of Congress did not assemble till some time in May, when Washington was sworn into office, and the new system introduced. The new government was not fully organized till autumn. The heads of departments could not be appointed till Congress had passed laws establishing those departments. When this had been done, Thomas Jefferson was appointed Secretary of State, Alexander Hamilton Secretary of the Treasury, Henry Knox Secretary of War, and Edmund Randolph Attorney-General. These gentlemen constituted Washington's cabinet. Thus the government was fully organized, and its beneficial influence was immediately seen in the rapidly increasing prosperity of the nation.

In November, 1789, North Carolina, by a convention called for that purpose, ratified the Constitution. In May, 1790, Rhode Island ratified it. All the original States were then united under the Constitution.

CHAPTER IX.

THE NATURE OF THE CONSTITUTION.

The preamble of the constitution reads thus:

"*We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*"

This preamble sets forth the object and nature of the Constitution. Two widely different views have been entertained. The one regards the Constitution as forming a national government for the people of the United States; the other regards it as a compact or league between sovereign States. The first view is the one entertained by the framers of the Constitution, and by the great majority of the people of the United States. The second was advocated by John C. Calhoun, and was held by a large portion of the people

of the Southern States, when the late rebellion took place.

Those who regard *the Constitution as a league* or compact between sovereign States, hold that if one of the parties to the compact fails to observe its provisions, the other parties are released from all further obligation. According to this view, if any State thinks one of the laws passed by Congress to be unconstitutional, it has a right to declare that law null and void within the limits of the State. If any State thinks the Constitution has been violated, it may secede from the Union, and become, if it chooses, an independent nation. South Carolina attempted to practice nullification in 1832, and nearly all the Southern States attempted to secede in 1860.

The Constitution is not a league or compact between sovereign States. It is an instrument adopted by the people of the United States, for the purpose of creating a government acting for many purposes directly on the people of the United States. It provides that the government thus created shall be superior in authority to all the State governments. It declares that the Constitution and laws of the United States "shall be the supreme law of the land, any thing in the constitution and laws of any State to the contrary notwithstanding."

The people of the United States made the government, and they alone can change or unmake

it, and in so doing, they must go according to the directions of the Constitution. Of course no State can nullify a law of Congress, and no State can secede. No State or individual can decide whether a law is constitutional or not. The Constitution refers the decision of such questions to the supreme court, and the decision is final.

That this is the true view of the Constitution and government appears from the following reasons:

The Articles of Confederation were confessedly a league, and they failed to meet the wants of the country. Hence a convention was called to amend them. The members of the convention came together for the purpose of amending the league, but they were soon convinced that something more was necessary; hence the first resolution passed by them was, "*Resolved,* That a national government ought to be formed, consisting of a supreme legislative, executive, and judiciary."

After the passage of this resolution, an effort was made to return to the league plan. Mr. Patterson, as we have seen, introduced certain resolutions having for their object the perpetuation of the league. It was distinctly understood that the two plans were before the house. "The true question is," said Mr. Randolph, "whether we shall adhere to the Federal plan, or introduce a national plan."

Seven States voted to "introduce a national plan,"

and only three against it. From that time onward the efforts of the convention were directed to the formation of a national government.

"If any historical fact in the world be plain and undeniable," says Daniel Webster, "it is that the convention deliberated on the expediency of continuing the Confederation with some amendments, and rejected that scheme, and adopted the plan of a national government with a legislature, executive, and judiciary of its own. They were asked to preserve the league; they rejected the proposition. They were asked to continue the existing compact between the States; they rejected it. They rejected compact, league, and confederation, and set themselves about framing the Constitution of a national government, and they accomplished what they undertook."

When the Constitution was published, one objection which was strongly urged against it was, that the members of the Federal Convention had transcended their powers. They were chosen, it was said, to amend the league of the States, and they had formed a national government. The advocates of the Constitution did not deny the fact thus stated. They did not claim that the Constitution was a league of States. They admitted that it framed a national government, and contended that such a government was necessary to the prosperity of the country.

In the Virginia convention, Patrick Henry ex-

pressly objected to the language of the preamble, "We the people of the United States." "Have they said, 'We the States'? Have they made a proposal of a compact between States? If they had, this would be a confederation; it is otherwise most clearly a consolidated government. The question turns, sir, on that poor little thing—the expression, 'We, the people,' instead of 'the States of America.'" *

The act of adoption by the convention speaks of the powers granted under the Constitution as "being derived from the people of the United States."

In the Pennsylvania convention, Mr. Wilson said: "This is not a government founded upon compact. It is founded upon the power of the people." Again: "This system is not a compact or a contract. The system tells you what it is; it is an ordinance and establishment of the people."

In the Connecticut convention, Mr. Johnson, who had been a member of the Federal Convention, after speaking of the difficulty of legislating for States in their political capacity, said: "They have, therefore, gone entirely upon new ground. They have formed one new nation out of individual States."

The preamble itself is very explicit and clear. There is no possibility of mistaking its meaning. It says nothing about the formation of a compact by sovereign States. It says nothing whatever about the

* Elliot's Debates, iii. 72.

States acting as States. It declares, "We, the people of the United States, do ordain and establish this Constitution for the United States of America."

Nothing is found in any part of the Constitution making mention of a league or compact between the States. In a league or compact the parties are named, and the mutual stipulations recorded. There is no trace of any thing of this kind in the Constitution. In no place are the States mentioned as contracting parties. The people speak throughout the document. They do not enter into stipulations with a party. They speak with the voice of authority. They declare what powers the government shall exercise, and what powers it shall not exercise.

The second section of the sixth article of the Constitution declares: "*This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.*"

No terms could be more explicit than these. If they do not forbid a State to nullify a law of Congress, or to throw off the authority of the Constitution, then language cannot be so framed as to forbid these acts.

The Constitution appoints an arbiter to de-

cide all questions in relation to the violation of the Constitution. It declares that "the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority." Every question, therefore, with respect to the violation of the Constitution, that can be made the subject of judicial proceedings, that can constitute a case, is to be decided by the Supreme Court, and that decision is final. This completes the supremacy of the Constitution. Suppose a State passes a law conflicting with the Constitution of the United States: a suit is brought under that law, and its constitutionality is argued before the Supreme Court. The Court declares the law unconstitutional, and hence, null and void: no regard is thenceforth paid to it.

An early decision of the Supreme Court declares, "The Constitution of the United States was ordained and established, not by the States in their sovereign capacity, but emphatically, as the preamble of the Constitution declares, by 'the people of the United States.'"

The several States cannot with propriety be spoken of as sovereign States. Sovereign power is supreme power—power that has no other power over it. A sovereign State is one that possesses sovereign power. Now, no one of the United States possesses sovereign power. There is a power, that of the Constitution,

higher than the power of any State. This is plain from the declaration, "This Constitution shall be the supreme law of the land, and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding." Thus the power of every State is limited; limited power is not sovereign power.

CHAPTER X.

CONGRESS—HOUSE OF REPRESENTATIVES.

Art. 1. Section I. *"All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."*

The first resolution adopted by the Federal Convention, as we have seen, contemplated the formation of a government with Legislative, Judicial, and Executive departments. In carrying out that reso lution, it was intended to keep these departments distinct and independent. The experience of the past has shown that when these departments are distinct, that is, when one class of men make the laws, and another class interpret them, and a third execute them, justice is much more likely to be done than when the legislative, judicial, and executive powers are possessed by the same person or persons. This division of power is wanting in an absolute monarchy. Hence there can be no security against injustice under such a government.

In an absolute monarchy, all power of every kind is in the hands of the monarch. He may appoint men to make laws, but if the laws do not please him, he can unmake them. He may appoint judges to interpret the laws, but their interpretations and decisions must be according to his will. If they are not, the judges will be removed, and others appointed in their places. He may appoint men to execute the laws, but they must consult his pleasure, or lose their places, if not their heads. Under a despot the three departments may exist in form, but not in reality.

It is not possible to make the three departments perfectly independent of one another; but they can be made distinct, and so far independent, that there shall be reasonable security that one department shall not invade the rights or unduly influence the action of the other. The framers of the Constitution aimed at doing this, and succeeded in a good degree. If they have in any degree come short, it is in making the judicial dependent for its organization on the legislative department.

The legislative power is vested in Congress, which consists of two separate houses. The Congress of the Confederation consisted of one house.

An act must receive the assent of a majority of both houses before it can be presented to the President for his signature.

Reason and experience unite in showing that such a

course is more likely to secure wise legislation, than the vesting of the legislative power in a single house. Public bodies, as well as individuals, are liable to excitement and passion. A measure may receive a majority of votes in a legislative body, and yet be an unwise and unjust measure. If it became a law as soon as it passed a single house, there would be no remedy but in repeal, and that would not take place speedily, if at all. But let such a measure, if it pass one house, be sent to another entirely distinct from the one that passed it. It will be coolly examined, and probably rejected. If a bill passes one house without due examination, it will be more carefully examined in the other. Thus the great advantage of having two houses in the legislature is, that each is a check on the other in preventing hasty, unwise, and unjust legislation.

Bribery and corruption are rendered more difficult when there are two bodies to corrupt instead of one.

The advantages of two houses will be greater according as they are differently constituted. If the members of one house are drawn from a different class of citizens, and have different responsibilities thrown upon them, and hold their seats for a different period, the check of one upon the other will be the greater.

The parliament of Great Britain, in which the legislative power of the realm is vested, consists of the House of Commons and the House of Lords. The

members of the House of Commons are chosen by the people for seven years; the members of the House of Lords belong to the hereditary peerage. The oldest son of a peer takes his seat in the House of Lords on the death of his father.

Art. 1, § 2. "*The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.*"

The term of service for a representative is two years. Some of the framers of the Constitution wished to have the representatives elected annually, and others for a longer period than two years. Two years were finally fixed upon as a medium.

If the term of service were only one year, the legislator would scarcely become familiar with his duties before his term would expire. If different persons were elected every year, as might be the case, the house would be constantly changing its character, and the effect might be, continual changes in legislation. The house would not possess the experience in legislation which is desirable.

On the other hand, if the term of service were five or seven years, the representatives would feel less responsible to their constituents, and would be more likely to abuse the power possessed by them. Dis-

honest and intriguing men would have a better opportunity to influence the course of legislation.

When the Constitution was formed, *universal suffrage* did not generally prevail. In most of the States there was a property qualification for voting. This differed in different States. In some States, a small amount of property entitled a man to vote for some of the lower offices, and a larger amount for the higher. It was necessary to define the qualifications for an elector of representatives, and the most convenient way seemed to be to adopt the qualifications required in each State to vote for the most numerous, by which is meant the lower, branch of the State legislature.

The members of the English House of Commons are chosen for seven years, but they rarely serve out the time for which they are chosen. The king can dissolve the house whenever he pleases, and order a new election. Whenever there is a majority in the house against the administration, or against the ministers, as it is termed, either the ministers resign and new ministers are appointed by the king, or the House of Commons is dissolved and a new one elected.

Art. 1, § 2, 2. "*No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.*"

It was thought that requiring the representative

to be at least twenty-five years old, would be something of a guaranty for the possession of knowledge and soundness of judgment. Age does not necessarily give wisdom, but age is a necessary condition of experience.

A man may be elected a member of the House of Commons at the age of twenty-one.

The representative must be a citizen of the United States, either by birth or naturalization. No country permits aliens to take part in the affairs of government, and few permit naturalized citizens.

The representative must be an inhabitant of the State for which he is chosen, in order that he may be acquainted with the wants and interests of his constituents. The States are by law divided into congressional districts, and the usage is to have the representative of a district an inhabitant of that district. The Constitution does not require this. It simply requires that the representative be an inhabitant of the State. A resident in Buffalo might constitutionally represent a constituency in New York city.

If it were customary sometimes to go out of the district for a representative, a greater number of able men might be elected representatives. As the usage now is, if there lived in a congressional district a dozen men, each one of them the peer of Henry Clay or William L. Marcy, only one of them could be in Congress at the same time, though it might be very desir-

able that the country should have their services as legislators.

A member of the House of Commons may be chosen for any place from any part of Great Britain. A resident of Edinburgh may be chosen for Cambridge. This custom brings many more able men into the House than would otherwise be there.

It will be observed that *no property qualification* is requisite in order to be a representative in Congress. In order that a man may be a member of the House of Commons, he must possess a certain amount of property. If a poor man happens to be elected, his wealthy friends place the requisite amount of property in his hands, that he may take his seat. In nearly every constitutional government except that of the United States, the legislators are required to be property holders. It is thought that those who possess property will feel a deeper interest in regard to the security of property and the administration of justice than those who have no property. It was a maxim of John Jay, "Those who own the country ought to govern it."

Art. 1, § 2, 3. "*Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding*

Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative. And until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three."

Under the Confederation each State had one vote. One of the great difficulties in forming the Constitution, was the unwillingness of the small States to relinquish their equality in representation in the legislature.

Another difficulty arose from slavery. The Northern States insisted that the representation should be apportioned according to the number of the free population. The slave States insisted that the slaves should be counted in the enumeration. A compromise was at length made, by which three-fifths of the slaves were counted. This gave the slave States a greater number of representatives in proportion to the free

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white population than the free States. When the rebellion took place, the slave States had more representatives in Congress than they would have been entitled to on the basis of a free population.

It was thought that some offset to this advantage would accrue to the North, from the provision which requires all direct taxes to be apportioned in the same manner as the representatives. But that provision has been, for the most part, inoperative. Very few direct taxes were laid previous to the civil war. The national revenue was raised by indirect taxation.

This provision of the Constitution respecting the apportionment of Representatives, has been changed by the fourteenth amendment to the Constitution. In section second of that amendment, it is declared, that the "*Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.*"

A strict compliance with the provision of the Constitution, which requires that representatives shall be divided among the States according to their respective numbers, is impossible. Suppose the population is thirty millions, and an attempt is made to apportion the representation according to the numbers in each State; suppose it be determined to assign a representative to every fifty thousand. The population of each State must then be divided by fifty thousand.

In all cases it is probable that a fraction would remain, and that fraction would be without a representative. This is the course that is adopted, and it comes as near the constitutional rule as is practicable. The Constitution provides that no State have more than one representative for every thirty thousand. It does not say it shall have one for every thirty thousand. As the population of the United States has increased, the ratio of representation has been from time to time enlarged by Congress. This was necessary to prevent the house from becoming unwieldy.

Art. 1, § 2, 4. "*When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.*"

The Executive of a State will feel an interest in having the State fully represented in Congress. Hence the power to issue writs of election will be promptly exercised.

Art. 1, § 2, 5. "*The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.*"

The power to choose its Speaker and other officers is necessary to the independence of the house. The Speaker of the House of Commons is chosen by the house, but must be approved by the king. There is no provision corresponding to this in regard to the Speaker of the House of Representatives.

Impeachment, "in a judicial sense, is a written, formal accusation of a person, as being guilty of some public offence or misdemeanor." In the English government, the power of impeachment is vested in the House of Commons.

CHAPTER XI.

THE SENATE.

Art. 1, § 3, 1. "*The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof for six years; and each senator shall have one vote.*"

The members of the convention were nearly unanimous in placing the legislative power in two houses. They were equally well agreed that the two houses should be differently constituted. Some thought the senators should be chosen directly by the people of the States, some thought that they should be chosen by the House of Representatives, and others that they should be chosen by the legislatures of the States. This last opinion prevailed.

It was thought that the choice would be more select, if made by a legislative body, than if made by the people. As the Senate has some very important duties to perform, besides that of uniting with the House in making laws, it was designed to adopt such

a mode of election as would secure for senators the ablest men in the land.

In forming *the House of Representatives,* we have seen that the small States yielded the equality they had hitherto enjoyed; in the Senate they were permitted to retain that equality. Each State, without regard to extent of territory or population, is entitled to two senators.

The Senate was designed to be a smaller body than the House of Representatives. Some duties are assigned it which could not well be performed by a large body. If only one senator had been assigned to each State, the State might often be without a voice in the Senate. Giving two senators to each State guards against this evil, and still does not render the Senate too numerous.

The term of service is six years. The senators unite with the President in the management of the foreign relations of the country. Their duties require an amount of experience greater than is required by the representatives, who are clothed simply with legislative powers. The Senate share with the President the treaty-making power, and advise and consent to his appointments to office. It is reasonable, therefore, that the term of office should be longer than that of the representatives.

The time finally fixed upon was the result of compromise between those who would have made the

term longer, and those who would have made it shorter.

Art. 1, § 3, 2. "*Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies.*"

The object of this provision was to satisfy those who feared that the senators would acquire an undue amount of power in consequence of the tenure of office for six years. This provision, while it now secures to each senator six years of service, renders the whole body less permanent, and, it was thought, less likely to accumulate power.

Art. 1, § 3, 3. "*No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected, be an inhabitant of that State for which he shall be chosen.*"

It was thought that the grave duties devolving

upon the senator required an experience of life and a maturity of judgment not usually found in those who are less than thirty years of age.

As *the Senate*, together with the President, has control of our foreign relations, and as foreign-born citizens are eligible to a seat in the Senate, it was deemed wise to require such a period of citizenship as would be likely to result in a strong affection for the adopted country.

Art. 1, § 3, 4. *"The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided."*

If the Senate were to choose their Speaker from their own number, the State from which he was chosen would have more than its due share of power, for the presiding officer can, to a considerable extent, influence the course of legislation. On the other hand, it would in part deprive the State of one of her senators.

The provision that renders *the Vice-President* the presiding officer of the Senate, is a wise one. Giving him a vote in case the Senate is divided equally, is also wise; since the Senate must, when all the members are present, consist of an even number, and hence a tie can easily happen. This provision of the Constitution preserves the equality of the States in the Senate.

Art. 1. § 3, 5. *"The Senate shall choose their other officers, and also a President pro-tempore in the*

absence of the Vice-President, or when he shall exercise the office of President of the United States."

It is customary for the Vice-President to retire a few days before the close of each session, that the Senate may elect a president *pro-tempore.* Then if, during the recess, the Vice-President is called to act as President of the United States, the Senate will have a presiding officer, and be ready to proceed to business at the opening of the next session. Experience has shown the wisdom of this custom.

The House of Lords is composed of the peers of England, sixteen representative peers of Scotland, and twenty-eight representative peers of Ireland, and the archbishops and bishops of the Church of England. The peers consist of the nobility of England. The different orders of nobility are; dukes, marquises, earls, viscounts, and barons. The bishops are not hereditary peers; they have seats in the House of Lords only by virtue of their ecclesiastical offices.

The king can add to the number of the House of Lords whenever he pleases, by creating peers, that is, making commoners peers. The dignity he thus bestows he has no power to take away.

If the king wishes a measure to pass the House of Lords, and there is a majority against it, he can change that majority into a minority, by creating a sufficient number of new peers. In 1832 it was proposed to create a sufficient number of peers to carry the Reform

Bill. When the peers saw that such a creation would take place, they yielded and passed the bill, rather than have an accession to their ranks from the plebeian orders.

The lord high chancellor is the presiding officer of the House of Lords. He is a cabinet officer, and holds office during the continuance of the administration of which he is a member. He is said to occupy the wool-sack. The richly wrought cushion on which he is seated when presiding over the House is filled with wool, a symbolical allusion to the manufacturing interests of the kingdom. The chancellor is always a peer of the realm, and, as such, a member of the House.

Art. 1, § 3, 6. "*The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.*"

By this provision of the Constitution, the Senate is clothed with judicial power for a certain purpose. An impeachment, as has been stated, is a written accusation against persons in office, for the purpose of bringing them to trial for misconduct. By the Constitution, the House of Representatives must bring the accusation, that is, present articles of impeachment, and the Senate must try the case and give judgment.

If a public officer, say a judge of the Supreme Court, is guilty or is supposed to be guilty of bribery, a motion is made in the House of Representatives to impeach him. Witnesses are called, and if the house think there is ground to authorize a trial, they prepare and send to the Senate articles of impeachment. The Senate, while trying the judge thus impeached, sit as a court of justice, and take a solemn oath to try the case faithfully, and a vote of two-thirds is necessary to conviction.

If *the President* of the United States is impeached, and found guilty and removed from office, the Vice-President succeeds to his place. The Vice-President should, therefore, not take part in the trial. The chief justice, as the highest judicial officer of the country, is the proper person to preside on so important an occasion, especially as he can have no personal interest in the issue of the trial.

As the offences for which men are commonly impeached are official misdemeanors, the Senate can, with greater propriety, try the offender than a court of justice. The courts of justice are accustomed to examine and decide questions of law.

If a *judge of the Supreme Court* were impeached, it would not be desirable that he should be tried by his associates in office.

The provisions of the Constitution relative to impeachment, are borrowed from the English Constitu-

tion. By the English Constitution, the power of impeachment is vested in the House of Commons, and that of trying the impeached, in the House of Lords. In the House of Lords conviction or acquittal is by a mere majority.

Art. 1, § 3, 7. "*Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.*"

The Constitution thus provides that no person can be put to death except by indictment, trial, and judgment according to law. In prohibiting a legislative body from inflicting the penalty of death, our fathers were in advance of the legislation of the world. The House of Lords, in addition to removal and disqualification, may inflict banishment, forfeiture of goods, imprisonment, and death. This provision of the Constitution prevents unprincipled partisans from destroying those who may be opposed to them, and who stand in the way of their wicked schemes. History shows that men have often been the victims of party hate.

A person impeached and condemned for a crime punishable by law, can also be indicted, tried by a court of justice, and punished. Suppose the President of the United States should be guilty of murder.

He would doubtless be impeached and removed from office. The Senate could not condemn him to death as a murderer. But he could be indicted for murder by a grand jury, and tried, and if found guilty of murder, executed.

Art. 1, § 4, 1. "*The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the Legislature thereof: but Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.*"

The propriety of this provision rests upon "this plain proposition, that every government ought to contain in itself the means of its own preservation." If a State executive and legislature should become disloyal, and neglect to make provision for the election of representatives to Congress, Congress has power to make the necessary regulations. The exception with respect "to the place of choosing senators" was added, because it was not thought becoming in Congress to prescribe the place where the legislature should meet.

Art. 1, § 4, 2. "*The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.*"

The disuse of Parliaments for many years under the Stuarts, and the tyranny consequent thereon, caused

the English people to insist on annual Parliaments. The Colonial Legislatures were accustomed to meet annually, and the provision requiring Congress to meet annually was adopted as a matter of course. It furnishes a check to executive and other official corruption, and prevents the country from suffering from the lack of legislation relative to events which may have taken place during the recess of Congress.

Art. 1, § 5, 1. "*Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner, and under such penalties, as each house may provide.*"

This is necessary to the independence of each house. If some other department of government had the power of determining who are entitled to seats, the character of the house might depend upon that department. Suppose that department to be strongly partisan. Partisan claimants only would be admitted to seats.

A similar provision exists in the English Parliament, and has been adopted by all constitutional governments.

If less than a majority could enact laws, and wield the power of the house, a small number of intriguing

men might, on some occasions, wield the power of the house. A comparatively small portion of the House of Commons may constitute a quorum.

In times of high political excitement, a majority might absent themselves in order to arrest the progress of legislation. To guard against this possible evil, a minority are empowered to compel the attendance of absent members.

Art. 1, § 5, 2. *"Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."*

In order that a legislative body may be independent, it must determine the rules of its proceedings. The rules which govern the proceedings of legislative and deliberative bodies, constitute what is termed *Parliamentary Law.* An acquaintance with parliamentary law is important to all legislators, and to all who take part in the proceedings of deliberative bodies of any kind. The parliamentary usages of England and America have done much to promote wise legislation. For example: one of these usages is, that no bill shall be passed without being read before the house three times, and that the three readings shall not all take place on the same day. This has a tendency to prevent hasty legislation.

To guard against the possibility of injustice, no member can be expelled unless two-thirds of all the

members vote for the expulsion. If a mere majority could expel, men obnoxious to the majority would not, in times of high political excitement, be secure in their seats. A similar power exists in the House of Commons.

Art. 1, § 5, 3. "*Each house shall keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.*"

The propriety of making the proceedings public is apparent. The people have a right to know what their agents are doing. A few acts may require temporary secrecy, and for this provision is made.

It is desirable that constituents should know how their representatives vote. Some men will vote for a bad measure, if their votes can pass unobserved. The fact that the yeas and nays may be called for and recorded and published, acts as a restraint upon such men. The provision is therefore an important one, though it is liable to abuse. A factious minority desirous of hindering the course of legislation may make frivolous motions, and demand the yeas and nays upon them, and thus consume the time of the house.

The sessions of both Houses of Congress are usually open to spectators. When the Senate is in ex-

ecutive session, that is, when it meets to confirm or reject the nominations of the President, it sits with closed doors.

To obtain admission to either house of Parliament, an order from a member of the house is necessary. A portion of the gallery of the hall in which the House of Commons meet, is partitioned off from the rest, and its seats are cushioned. This is called the Speaker's gallery. To this, distinguished visitors are admitted. When a vote is taken in the House of Commons, all spectators are required to withdraw. This usage has not been copied by the House of Representatives.

Art. 1, § 5, 4. *"Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting."*

Art. 1, § 6, 1. *"The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and in returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place."*

Under the Confederation, we have seen, the delegates were to be paid by the States sending them. As payment was not always prompt, attendance was not always regular.

If compensation were left to the State legislatures, the national government would become dependent upon the State governments. If members were not paid, men of limited means could not serve as legislators.

The members of the British Parliament do not receive any compensation. This has not kept men of limited means out of Parliament, but it has rendered them dependent upon their wealthy friends. It is desirable that the legislator should in every sense be independent.

Freedom from arrest during the session, and while going and returning, is necessary to prevent constituents from losing the services of their representative. It is called a privilege of a member, but it is really a provision of justice for the constituent.

If the representative or senator be guilty of certain high crimes, he may be arrested. The commission of such crimes would prove his unfitness to act as a legislator.

Freedom of speech is essential to the independence of the legislator. If he could be called to account for any thing said in the house, by a power from without, freedom of debate would be at an end, and legislation a farce.

This feature of the Constitution was borrowed from the English Constitution. In England, if a man publishes his speech after delivering it in Parliament, and it contains defamatory or libellous matter, he is liable to prosecution. There has been no judicial settlement of this question in the United States. It is contended by some that the freedom guaranteed by the Constitution extends to the publication as well as the utterance of one's speech.

Art. 1, § 6, 2. *"No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office."*

An influential member might cause a lucrative office to be created, and then receive it at the hands of the executive, in return for political party services. The Constitution aims to prohibit all such corruption. It would make the legislator as disinterested as possible.

In prohibiting all persons holding office under the United States from being members of either house, the Constitution differs from that of England. The English Constitution permits the members of the cabinet and officers of the crown to hold seats in the

House of Commons. If a member be appointed to office, he thereby vacates his seat, but he may be immediately reëlected and take his seat. There is an advantage attending this arrangement. The leaders of the administration, the heads of departments, can, as members of the house, bring forward and advocate their plans. They are always on hand to give information or answer objections.

Art. 1, § 7, 1. *"All bills for raising revenue shall originate in the House of Representatives, but the Senate may oppose or concur with amendments, as on other bills."*

This provision is borrowed from the House of Commons. Whatever reasons may exist for it there, they do not exist in the United States. As the Senate has the power of amending what are termed "money bills," it might just as well have the power of originating them.

The English Constitution requires that all money bills originate in the House of Commons, and the House of Lords must pass or reject them without alteration. This gives the democratic portion of the government well-nigh supreme power, if they choose to exercise it. The House of Commons may attach to a money bill a rider requiring concessions very distasteful, it may be, to the aristocracy. The Lords can make no alteration in the bill. They must pass it with its obnoxious provision, or reject it. To reject it

may be to deprive the government of funds, to stop the payment of pensions, and throw things into confusion. If the Commons will it, they can compel the Lords to pass any measure they may choose to propose. Reverence for the aristocracy seems to keep them from exercising their power.

Art. 1, § 7, 2. "*Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.*"

A qualified negative on the acts of Congress is thought to be needed, to prevent the legislative from encroaching on the executive department. It is an additional check upon the legislative bodies, and may prevent hasty and unconstitutional legislation.

The King of England has an absolute negative on the acts of Parliament, but there has not been an example of its exercise for nearly two centuries.

It was not expected that *the veto power* would be often used by the President. It was designed to meet emergencies. Washington used it but once, and then on constitutional grounds. This veto plainly prevented a violation of the Constitution.

In defence of this provision of the Constitution, it may be said, that any measure so important that the country would suffer great inconvenience if it were not passed, cannot be prevented by the President's veto. It will secure the votes of two-thirds of both houses, and thus become a law.

It cannot be denied, that, when parties in Congress are not far from equal, the President can, in consequence of possessing the veto power, exercise an undue control over the course of legislation.

Art. 1, § 7, 3. "*Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary* (*except on a question of adjournment*) *shall be presented to the President of the United States; and before the same shall*

take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

If an order or resolution might take effect without the signature of the President, a bill or matter of great importance might, under the name of a resolution, become a law without the President's assent.

CHAPTER XII.

POWERS OF CONGRESS.

Art. 1, § 8, 1. "*The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.*"

The former of the two first clauses sustains to the latter the relation of means to end. Congress shall have power to lay taxes in order to pay the debts and promote the general welfare. If this is not the true interpretation, then the power of Congress is unlimited. They can do every thing that they think tends to provide for the common defence and the general welfare. Now, it is well known that it was designed to form a government of limited powers, and to state the limitations is one of the objects of the Constitution.

This part of the Constitution gives Congress *power*

to raise taxes for certain specific purposes. Congress therefore has no power to lay taxes for any other purposes. If Congress should pass a law imposing a tax of a million dollars to aid the liberal cause in Italy, or to spread the gospel in Africa, the law would be unconstitutional.

The want of power to lay and collect taxes was a radical defect of the Confederation. No government can be efficient in peace or war, unless it can command the means for meeting its pecuniary expenditure. It can have this means only as it has the power of laying and collecting taxes.

Taxes include contributions of every kind required by the government from its subjects for the service of the State. Imposts are taxes levied upon goods upon their importation from a foreign country. Excises are taxes levied upon goods manufactured or sold in the country. The word "duties," as generally used, includes imposts and excises, and taxes on goods exported from a country.

All taxes laid by Congress must be uniform throughout the United States. This is an obvious dictate of justice.

Can Congress impose a duty, that is, lay a tax for protecting and encouraging domestic manufactures, on goods imported from foreign countries? This question has been warmly debated by the friends and opponents of a tariff for the protection and en-

couragement of domestic industry. It is admitted by all, that Congress has power to lay a tariff for raising a revenue to be applied to paying the debts and promoting the general welfare ; but it has been denied by some that Congress has power to lay a tariff for the encouragement of domestic industry. If Congress has power to lay and collect taxes in order to promote the general welfare, then, if the laying of a tariff is adapted to promote the general welfare, it would seem that Congress has power to lay a tariff.

The preamble to the first act of the first Congress under the Constitution for raising a revenue, recognizes the duty, on the part of Congress, of encouraging domestic manufactures. It does not appear that there was a single member of Congress who doubted its power to make laws for the encouragement of domestic manufactures. Hamilton's celebrated Report on Manufactures takes for granted that Congress possesses this power. The doctrine that laws for the encouragement and protection of domestic manufactures are unconstitutional, was first taught by men who had been instrumental in causing such laws to be passed.

The question is not open to debate. Repeated decisions of the Supreme Court, the tribunal authorized by the Constitution, have settled the question.

The question whether Congress ought to pass such laws, or whether a system of free trade should prevail, is a question of political economy, and not of constitu-

tional law. On this question there is a difference of opinion among statesmen, and will be, probably, for many years.

Congress has also power,

2. "**To borrow money** *on the credit of the United States.*" If this power were not possessed, it would be necessary to provide by taxation for every public expenditure. This would be impossible in a long and expensive war. The United States could not have raised by taxation the immense sums expended in the late civil war. If a country cannot carry on war, it cannot support its dignity and maintain its independence. Power to contract debts may be said to be essential to the continuance of a government.

The law of nations recognizes the power of all governments to contract debts, and makes the debts contracted by one government binding on a succeeding government, though that government may be of an entirely different nature, and may be founded on the forcible overthrow of the previous government.

The exercise of this power by the government should be closely watched by the people.

Congress has also power,

3. "**To regulate commerce** *with foreign nations, and among the several States, and with the Indian tribes.*"

To regulate commerce is to prescribe the rules for carrying on commercial intercourse between nations.

It of course includes rules relating to navigation. The Confederation did not possess this power, and the consequence was the ruin of our interests connected with commerce and navigation. Foreign nations placed such restrictions on our commerce as they chose, and the Congress of the Confederation had no power to make any retaliatory restrictions, or take any corrective measures.

From the commencement of the government under the Constitution, this power has been exercised. Of course it involves power to lay a protective, or even a prohibitive tariff.

In 1807, the question was raised whether Congress had power to lay an embargo of unlimited duration. An embargo forbids all ships and vessels from leaving any port in the country for any foreign port, so long as the embargo continues. In 1807, President Jefferson recommended the laying of an embargo by Congress, as a measure of safety for our vessels, which suffered in consequence of the wars then in progress among the European powers. It was laid. Its constitutionality was questioned by some in the commercial States. It was admitted that Congress had power to regulate commerce, but it was contended that to regulate was not to destroy. An embargo unlimited in duration was the destruction of commerce.

An appeal was made to the Supreme Court upon the question. The court decided that the law was

constitutional. Since then the power has not been questioned, though it has not been exercised.

The power to regulate commerce includes power to pass Navigation Laws. Navigation laws have for their object the granting of peculiar privileges to the ship-owners of the country making the laws. The power of Congress to pass such laws has not been called in question.

Congress has also power to regulate commerce among the States. This is necessary to the prosperity and harmony of the States. "If each State were at liberty to regulate the trade between State and State, it is easy to foresee that ways would be found out to load the articles of import and export, during their passage through the jurisdiction, with duties which should fall on the makers of the latter and the consumers of the former. The experience of the American States under the Confederation abundantly establishes that such arrangements could be and would be made under the stimulating influence of local interests, and the desire of undue gain. Instead of acting as one nation in regard to foreign powers, the States individually commenced a system of restraint upon each other, whereby the interests of foreign powers were promoted at their expense. When one State imposed high duties on the goods or vessels of a foreign power, to countervail the regulations of such power, the next adjoining States imposed lighter du-

ties, to invite those articles into their ports, that they might be transferred thence into the other States, securing the duties to themselves. This contracted policy in some of the States was soon counteracted by others. Restraints were immediately laid upon such commerce by the suffering State; and thus a state of affairs disorderly and unnatural grew up, the necessary tendency of which was to destroy the Union itself." *

All these difficulties were brought to an end by conferring upon Congress the power to regulate commerce among the States.

The power to regulate commerce with the Indian tribes was necessary to the peace and safety of the frontier States.

The possession of this power to regulate commerce, enabled Congress to place the country on equality with foreign nations, and to compel them to respect the rights of our commerce, and to establish an equitable and harmonious intercourse among the States. The possession of this power by Congress was absolutely necessary to make the States one nation.

Congress has also power,

4. "*To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States.*"

* Story.

An alien, that is a foreigner, a subject of a foreign State, is naturalized when, in accordance with the law, he has renounced his allegiance to his sovereign or government, and taken the oath of allegiance to the Government of the United States. He is then a citizen of the United States, entitled to all the rights and privileges of those who were born citizens, except the privilege of being eligible to the Vice-Presidency and Presidency of the United States. As the citizens of each State are entitled to all the rights of citizenship in the other States, the rule for making citizens ought of course to be uniform.

A bankrupt law is a law releasing the debtor from the legal obligation to pay his debts. Whether a release from legal obligation is also a release from moral obligation is a question of morals. Whether bankrupt laws ought to be passed is doubted by many. Granting that it is proper that such laws should be passed, it is clear that they should be passed by the Congress of the United States, that they may be uniform throughout the States. That there are evils connected with a law by which the debtor can free himself from legal obligation to pay his debts, cannot be denied.

Most of the States have insolvent laws, but they do not affect debts contracted previous to the passage of the law, nor debts due to citizens of another State.

Congress also has power,

5. "**To coin money,** *regulate the value thereof and of foreign coin, and fix the standard of weights and measures.*"

6. "*To provide for the punishment of counterfeiting the securities and current coin of the United States.*"

The coin of the country should be of uniform purity and value, and hence should be issued by the National Government. If the States or if individuals were to coin money, provided they put the same amount of gold and silver in the coin that is put in at the mint of the United States, their coin would be as valuable as the coin of the United States. But if the different States and individuals were allowed to coin, there would be less security for the purity of the coin than at present. It is true that the coin may be debased by the agents of the United States, but the security is greater when one power controls the issue.

It is of the utmost importance to the business interests of the country that weights and measures should be uniform. This could not well be secured, if the regulating power were not vested in Congress.

The power to punish the counterfeiting of the securities and coin of the United States, appropriately ollows the power to issue the same.

Congress has power,

7. **"To establish Post-Offices and Post-Roads."**

The National Government only can establish and support an efficient postal system throughout the United States. To establish post-offices and post-roads, is not merely to designate the places where post-offices shall be kept, and the roads over which the mail shall be carried; it gives Congress power to build post-offices, and if need be to construct roads. Power to do these things is implied in the power to establish post-offices and post-roads. Power to do a thing implies power to use the necessary means.

Congress has power,

8. **"To promote the progress of science** *and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."*

It is difficult to see why an author has not as permanent a right to the product of his brain as the shoemaker has to the product of his hands. It is true, he cannot enforce his right, even for a limited time, without a copyright granted by the government. If Congress had not the power to grant copyrights, the author would be obliged to apply to the State governments. His property would not be secure unless he had a copyright from every State. If he had a copyright in only one State, it might be violated with

impunity in every other State. The same remarks apply to patents for inventions.

Congress has power,

9. "**To constitute tribunals inferior** *to the Supreme Court.*"

10. "**To define and punish piracies and felonies** *committed on the high seas, and offences against the law of nations.*"

The National Government is responsible to foreign governments for the conduct of its citizens on the high seas, hence it should have power to define and punish offences committed there. The "high seas" begin at low-water mark, and embrace all the waters of the ocean. The term felony is usually employed to designate such crimes as are punishable by death.

Congress has power,

11. "**To declare war,** *grant letters of marque and reprisal, and make rules concerning captures on land and water.*"

12. "**To raise and support armies;** *but no appropriation of money to that use shall be for a longer term than two years.*"

13. "**To provide and maintain a navy.**"

14. "**To make rules** *for the government and regulation of the land and naval forces.*"

15. "**To provide for calling forth the militia** *to execute the laws of the Union, suppress insurrections, and repel invasions.*"

16. "*To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.*"

The declaration of war is a solemn act, and one in which it is fitting that both branches of the legislature and the executive take part. War should not be entered upon unless deemed necessary by a majority of both houses of Congress, and by the President.

The British Constitution gives to the king alone the power to declare war; yet, as the Commons hold the purse, he cannot carry on a war unless a majority of the Commons approve it. Thus the power to declare war rests practically with the House of Commons.

Letters of marque and reprisal are commissions granted by a government to its citizens to seize the property of an enemy, or of persons belonging to another government refusing to do justice to the citizens of the country granting the commissions.

If two nations are at war, individuals are not at liberty to fit out armed vessels, and seize the property of the enemy on the high seas. Were this done without a commission from the government, it would be piracy, and the authors would, if captured by the enemy, be treated as pirates, and not as prisoners of war.

Under the Confederation, Congress had no power to raise armies. It had power simply "to agree upon the number of land forces, and to make requisitions from each State for its quota." It was then the duty of each State to furnish its quota. Experience proved that the system was miserably inadequate. "It is essential to the common defence, that the national government should possess the power to raise armies, build and equip fleets, prescribe rules for the government of both, and provide for their support."

The power to raise and support armies is not without limitation. No appropriation of money for the support of armies can be made for a longer term than two years. A new Congress is chosen every two years. If the people disapprove of the war, they can put an end to it by electing to Congress men representing their views.

Congress has power to provide for the calling out of the militia to execute the laws, to suppress insurrections, and repel invasions. It was necessary to give Congress this power, or to keep a standing army. In 1795, Congress, in pursuance of this authority, provided by law "that whenever the United States shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe, it shall be lawful for the President to call forth such a number of the militia of the State or of the States most convenient to the place of danger or scene of action, as he may

judge necessary to repel said invasion, and to issue his order for that purpose to such officer or officers of the militia as he shall think proper."

The Constitution says that Congress shall provide for calling out the militia to repel invasions. The law authorizes the President to call them out in case of "imminent danger of invasion," on the principle that power to repel invasion includes the power to guard against any attempt and danger of invasion.

A decision of the Supreme Court has determined that the authority to decide when the danger is sufficient to justify a call for the militia, rests with the President, and not with the officers to whom the orders of the President are addressed. If the President should abuse the power, and call out the militia when there was no necessity for so doing, he would be liable to impeachment.

The power to organize, arm, and discipline the militia, and to govern such part of them as may be employed in the service of the United States, is necessary to their efficiency. The appointment of the officers, and authority to train the militia according to the discipline prescribed by Congress, is reserved to the States. It was the policy of the framers of the Constitution to leave as much power to the States as was consistent with an efficient government for the United States.

Congress has power,

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

Art. 1, § 8, 17. *"To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."*

It is necessary for the independence of Congress that it should possess supreme authority over the place of its sessions. At one time, the Congress of the Confederation, while sitting at Philadelphia, was surrounded by a mob of mutineers from the Continental army. The executive of Pennsylvania not taking prompt measures for their defence, Congress adjourned to Princeton, New Jersey, and from thence, for greater convenience, to Annapolis.

The forts, magazines, etc., belonging to the United States, should not be under the control of any one of the States. This is too plain to need proof.

While it is conceded by all, that Congress had no *power to abolish slavery* in the States so long as those

States performed their constitutional duties, yet there can be no doubt as to their power to abolish slavery in the District of Columbia. The Constitution clothes Congress with power to "exercise exclusive legislation in all cases whatsoever."

Congress exercised this power in the year 1863, by forever abolishing slavery in the District of Columbia.

The clause declaring that Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the powers expressly conferred, was scarcely necessary. Power to do a thing includes the power to use the necessary means for doing it.

This clause of the Constitution has become noteworthy, because on it was founded the argument for the constitutionality of a national bank. The power of Congress to charter a national bank was once keenly debated, and the leading statesmen of the day took opposite sides of the question.

The first national bank was chartered by Congress in the early part of the first administration of Washington, with a capital of $10,000,000. When the bill was presented to Washington, he asked the opinion of his cabinet. Hamilton and Knox advised him to sign the bill, Jefferson and Randolph advised against it. After long deliberation, he signed it, and it became a law.

The charter of the bank expired in 1811. In 1816 a second national bank, chartered by Congress, went into operation with a capital of $30,000,000. Its charter expired in 1836. Bills renewing its charter were passed by Congress, and vetoed by President Jackson on the ground that they were, in his view, unconstitutional.

The main argument in favor of the constitutionality of an act of Congress chartering a bank of the United States, may be stated as follows: a bank is a necessary and proper means of conducting the fiscal affairs of the government, therefore it is constitutional.

The objector says that it is not a necessary means, for the fiscal affairs of the government can be, and have been, managed without it.

To this it is replied that the term *necessary* is not to be taken in its strictest sense, for it is followed and modified by the word proper—"necessary and proper" means.

The question has been twice before the Supreme Court, and the decision in both cases was in favor of the constitutionality of the bank. Since the arbiter appointed by the Constitution has decided the question, it can no longer be regarded as an open one.

This power was exercised by Congress in 1863, in the passage of "the act to provide a national cur-

rency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof."

This act gave existence to the national banks which are scattered throughout the land.

CHAPTER XIII.

PROHIBITIONS ON CONGRESS AND THE STATES.

Art. 1, § 9, 1. "*The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*"

The slave trade was carried on between Africa and the Southern States, and by every civilized nation of Europe, when the Constitution was formed. When the subject came before the convention, some of the States desired to introduce into the Constitution an article prohibiting it at once.

The proposition to allow its continuance to the year 1808, was finally carried by the aid of Northern votes. It is supposed that some of the Northern votes were given for the extension of the slave trade,

on condition that Southern votes should be given in favor of navigation laws desired by the North. It is estimated that 300,000 slaves were imported between the time of the formation of the Constitution and 1808.

This was the first movement in the civilized world toward restricting and abolishing that inhuman traffic. Congress prohibited it as soon as this provision of the Constitution would allow.

Art. 1, § 9, 2. *"The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."*

The writ of *habeas corpus* is the great safeguard against unjust imprisonment. If a man is arrested and imprisoned, a writ of *habeas corpus* may be sued out before a competent judge. By this writ, the judge orders the man to be brought before him, and requires those detaining him to show cause why he should not be discharged. If good reasons are given why he should be deprived of his liberty, the judge remands him to prison. If good cause is not shown, he discharges him. While this writ is not suspended, no one can be held in prison for any considerable length of time, without just cause. It may, therefore, well be regarded as one of the greatest safeguards of individual liberty.

There may come emergencies when the public safety may require that the writ be suspended. The

only emergencies authorizing its suspension are rebellion and invasion.

During the late rebellion, the writ of *habeas corpus* was suspended. Men were arrested and put in prison without the forms of law. It was one of those extraordinary occasions, which, according to the constitutional provision, justify the suspension of the writ of *habeas corpus*.

Who is to decide whether, in time of rebellion or invasion, the public safety requires the suspension of the writ? Congress or the President? Some contend that the power to decide rests with the President: others, that it rests with Congress. In the late suspension, the act was done by the President, and subsequently sanctioned by Congress.

Art. 1, § 9, 3. *"No bill of attainder or ex post facto law shall be passed."*

A bill of attainder is an act of a legislature declaring a man guilty of some crime, and sentencing him to death. In former days such acts were passed, often without giving the accused an opportunity to answer to the accusation brought against him, and without the formality of proof. Many legislative murders have thus been committed. The bloody records of the past led our fathers effectually to prevent this kind of injustice in the United States. Ours is the first government prohibiting acts of attainder.

An ex post facto law defines itself as being

made after the performance of the act which it declares to be criminal. The obvious injustice of such a law renders it proper that it should be forbidden by the Constitution. "The prohibition reaches every law whereby an act is declared a crime, and made punishable as such, when it was not a crime when done; or whereby an act, if a crime, is aggravated in enormity or punishment; or whereby different or less evidence is required to convict an offender than was required when the act was committed."

Art. 1, § 9, 4. "*No capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken.*"

A capitation is a poll-tax, that is, a tax levied by the head. This clause required, that in laying a poll-tax only three-fifths of the slaves should be counted. Three-fifths of the slaves, it will be recollected, were included in the enumeration of the population with reference to representation and direct taxes.*

Art. 1, § 9, 5. "*No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another.*"

"To enter," is for the captain to report the arrival of the ship and the contents of the cargo, and get

* The abolition of slavery renders this provision inoperative.

leave to land the same. "To clear," is to report the ship and her intended voyage and cargo, and receive the necessary papers from the authorities.

This requires the National Government to treat the different States with equal justice. Under the British colonial system, no American vessel could enter a port on the continent of Europe, unless it had previously entered and cleared from a British port. The object of this was to benefit British ports. Congress cannot pursue a similar course in regard to any one of the States.

Art. 1, § 9, 6. "*No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.*"

The improper use of the public funds by any officer of government is here guarded against, and additional responsibility is thrown upon those who have charge of the treasury, by the publication of the receipts and expenditures.

Art. 1, § 9, 7. "**No title of nobility** *shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of Congress, accept any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.*"

Titles of nobility are inconsistent with the equality

which is the basis of republican institutions. The remaining provision was intended to guard against foreign influence. The officials of one government have often been bribed to favor the interests of another. This provision of the Constitution is not a perfect safeguard against bribery, but it will act as a restraint; at least, no one can be bribed by a title which he cannot accept.

The States are also prohibited from granting any title of nobility.

Art. 1, § 10, 1. *"No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."*

If a State could enter into *treaties with foreign nations*, it would render useless the power given to the General Government to make treaties. One State might enter into engagements with foreign nations, which might be very injurious to other States. The action of a single State might involve the whole nation in war. In fact, the chances for war would be multiplied by the number of States. There could be no such thing as a supreme national government, if the individual States could enter into treaties, alliances, or confederations. We may here notice the impropriety

of speaking of the States as sovereign States, when they are entirely destitute of the treaty-making power.

If the States could grant letters of marque and reprisal, there would be constant danger of war. Each State might as well have power to declare war as to issue letters of marque.

If each State could coin money, the coinage of the different States might be different. There might be as many different currencies as States. Those who have travelled in Europe, and found themselves compelled to use different kinds of money in the course of a few hours, as they passed from one territory to another, can have some idea of the great inconvenience that would result from having different kinds of money in the different States.

If the States possessed power to coin money concurrently with the General Government, and were to adopt and issue the same coins, there would not be the same security that there now is that the work would be faithfully done.

Under the Confederation, the States had a concurrent power with Congress to coin money; but Congress had exclusive power to regulate the alloy and the value of the coin issued by the States. The cost of coining is less, and the security for uniformity in value greater, by vesting the power of coining exclusively in the National Government.

The prohibition relating to bills of credit was

designed to prevent the States from issuing paper money—that is, treasury notes or government promises to pay, intended to circulate as money. Before and during the Revolution, Congress and the legislatures of the States issued bills of credit or paper money. The consequence was, the disappearance of gold and silver from circulation, and the continued depreciation of the bills until they became worthless. The evils of an irredeemable, depreciating currency are great beyond calculation. There can be no doubt as to the wisdom of this prohibition on the States, and it may be questioned if there would not have been equal wisdom in extending it to the United States.

This prohibition to issue bills of credit, does not deprive the States of the power to borrow money, and to give bonds or certificates of indebtedness. When the Constitution was formed, bills of credit signified a paper currency issued by the legislative power.

No State can "make any thing but gold and silver coin a tender in payment of debts." "A tender is an offer of a sum of money in satisfaction of a sum or claim, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it. A mere offer to pay it is not, in legal strictness, a tender." Gold and silver is the usual legal tender throughout the civilized world. Gold and silver alone constitute money. When a man contracts a debt, enters into an engagement to

pay money, his creditor is wronged if he is obliged to take any thing else.

The legislation of the States furnished many examples of the evil guarded against by this prohibition. "Property of any sort, however worthless, either real or personal, might be tendered by the debtor in payment of his debt; and the creditor was compelled to take the property of the debtor, which he might seize on execution, at an appraisement wholly disproportionate to its real value." Such laws "entailed the most enormous evils on the country; and introduced a system of fraud, chicanery, and profligacy which destroyed all private confidence, industry, and enterprise." *

The Constitution does not prohibit Congress from establishing by law a legal tender not consisting of gold and silver. It does not formally bestow the power to do it. It is silent on the subject.

No State "shall pass any bill of attainder or *ex post facto law*." Before the adoption of the Federal Constitution, every State, unless prevented by its own constitution, might pass bills of attainder and *ex post facto laws*. We have seen that Congress is forbidden to pass such laws. That prohibition would be of little consequence, if the same prohibition were not laid upon the States. Such laws were often passed by the States during the Revolutionary war.

* Story.

No State shall pass any "law impairing the obligation of contracts." The object of this provision is to secure the inviolability of contracts. The word contract is here used in a much wider sense than that of an agreement between man and man. It includes legislative grants, charters, and compacts between States. If a State were to pass a law altering the terms of an existing contract or agreement between parties, the law would be null and void, because it would be unconstitutional. If a State grants certain privileges to a corporation, to a banking company for example, so long as the company complies with the terms and conditions of the grant, the legislature can not repeal or change the character of the grant.

A charter or act of incorporation is a contract in view of the Constitution. So long as the trustees do not violate their charter, it cannot be altered by the legislature without their consent.

Does not this clause of the Constitution prohibit the States from passing insolvent laws? It prohibits them from passing laws affecting debts contracted before the passage of the law, and debts due to citizens of another State. The Supreme Court has decided that the States may pass laws discharging the debtor from debts contracted subsequently to the passage of the law. The creditor allowed the debt to be contracted knowing that the insolvent law existed.

Art. 1, § 10, 2. "*No State shall, without the*

consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any compact or agreement with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

The object of an inspection law is to secure the purchaser against imposition, by an official examination of the article, and a certificate as to the quality of the same. The interests of New York require that the flour sent from that port be of good quality, or at least that it be what it purports to be. To secure this, an inspector is appointed by the State, who inspects the flour about to be shipped. For this he must be paid, and if it be necessary for the execution of the law, the State may lay a duty to meet the expense. If the duty brings in more than is necessary to execute the law, it must be paid over to the United States. If this were not required by the Constitution, the State might raise a revenue from exports or imports, under pretence of making provision for the

execution of her inspection laws. To prevent every thing of the kind, it is expressly provided that such laws shall be subject to the revision and control of the Congress.

Tonnage is the number of tons burden which a ship can carry. A duty on tonnage is a tax proportioned to the tonnage of the ship.

As the power to declare war is vested in Congress, and as the protection of the whole Union is confided to the National Government, there is no reason why any individual State should keep troops or armed ships in time of peace. In time of war, a State may be so situated as to render it necessary for her to raise troops in addition to those of the National Government. So also, when the State is in imminent danger of invasion, it is proper that the State should possess and exercise this power.

We have thus considered the powers conferred on Congress by the Constitution, and the prohibitions on Congress and on the State legislatures. We have seen that such powers were conferred on Congress, as were necessary to enable it effectually to provide for the common interests of the States, and the welfare of the whole as one nation. We have seen that each State has power to legislate on domestic interests, and that Congress

is restrained from interfering with such legislation. The two systems of government, the National and the State, are so adjusted as to work in harmony, and unite in promoting the prosperity of the nation.

CHAPTER XIV.

THE EXECUTIVE DEPARTMENT.

Art. 2, § 1. "**The executive power** *shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows.*"

A prompt, vigorous, and faithful execution of the laws is essential to good government. Experience has shown that such an execution of the laws is most likely to be secured when the executive department is distinct from the legislative.

Experience has also shown that the executive power should be vested in a single person—that a single is better than a plural executive.

Unity, secrecy, promptness of decision and action are best secured by a single executive. Differences of opinion, jealousies, and a divided responsibility are liable to take place in a plural executive.

Rome had a plural executive in her two consuls. History records the resulting evils.

Some of the American States during the Revolu-

tionary war had a plural executive. The executive power in Pennsylvania was at one time vested in a committee of thirteen. The palpable evils resulting, led all the States to adopt a single executive. It may, therefore, be regarded as a settled maxim in political science, that the executive power should be vested in a single person. On this point the framers of the Constitution were unanimous.

The President is elected for four years. There was a good deal of discussion on this point in the Federal Convention. Some wished to have the term of service much shorter, and some wished to have it extended to seven years. Hamilton would have had it continue during good behavior.

In favor of four years it may be said, that it is long enough to carry out a system of policy. If the executive power were possessed but for one year, a system could only be entered upon; it could not be completed, or so far carried out as to be tested. Nothing important would be undertaken. To meet the exigencies of the hour would be all that the executive would attempt to do.

On the contrary, were the executive power possessed for ten years, there would be danger of its abuse. All experience has shown that men cannot be trusted with power for any great length of time. The weakness and wickedness of man requires that great power should not be in the same hands for a great length of time.

It will be observed that the President's term of office is intermediate between that of the representative and the senator. The House of Representatives may be entirely changed, and two-thirds of the Senate, during one Presidential term. If, therefore, the executive power is seen to influence unduly the legislature, the people can elect representatives and senators who will be less subservient to his will.

The President can be re-elected as many times as the people may see fit. Some think he should not be reëligible. If this were the case, he would not shape his policy with reference to securing a reëlection. On the other hand, he might pursue a course of corruption which the hope of a reëlection might prevent.

If he were not reëligible, the services of a very valuable man might be lost when most needed. There are times when experience is of the utmost importance. It would be very unwise to prevent the people from availing themselves of the experience gained by four years' service in the executive department. The loss to the country of Washington's second term of service would have been irreparable.

It should be remembered that the office of President does not exist for the benefit of the politicians, but for the benefit of the people. The Constitution should make such provisions in respect to it, as will secure to the people the most faithful execution of the laws, not such as will give to political aspirants the

best opportunities of securing the exercise of executive power.

The Constitution makes provision for a *Vice-President*, to be chosen at the same time and in the same mode as the President. It was the intention of the framers of the Constitution to make the office one of dignity, to which no one would be chosen who was not fully qualified to exercise the office of President. John Adams was chosen the first Vice-President, and Thomas Jefferson the second. Subsequently the office began to be regarded as an unimportant one; but the accession of three Vice-Presidents to the Presidency, in each case for nearly the full term of four years, has restored the importance of the office in the view of the people. Experience has shown the wisdom of providing for the filling of the office of President, in case of his decease or removal, without having recourse to a special election. Hereafter, it is hoped, the people will be as careful in selecting their Vice-President as their President.

Art. 2, § 1, 2. "*Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of profit or trust under the United States, shall be appointed an elector.*"

When the Constitution went into operation, the

Presidential Electors were in some States chosen by the legislatures, in others the legislatures directed that they should be chosen by the people. When John Jay was governor of New York, the electors were chosen by the legislature. By calling an extra session of the legislature, he could have secured the election to the Presidency of his candidate, and kept his party in power for at least four years longer. He judged that it "did not become him to do it." He would not use his power as governor to promote the ascendency of his party, though it could be legally done.

At present, *the electors* in all the States are chosen by the people. All persons holding offices of profit or trust under the United States, are prohibited from being electors. This provision was designed to prevent office-holders from exerting their official influence in the electoral college. The design of having electors was to secure a better choice for President than would be made by the people. It was thought and expected that the electors would select a man for President, and that they would be better qualified to make a selection than the people at large.

The practical working of this provision of the Constitution has been entirely different from what was expected by those who made it. The electors have not been called on to select a candidate, but to elect one already selected. The people might just as

well vote directly for President as to vote for electors. The system of electors has proved to be a useless piece of constitutional mechanism.

Art. 2, § 1, 3. *"The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States."*

If the votes in different States were given at different times, there would be a greater opportunity for intrigue and corruption than if the votes were given on the same day. Suppose the votes were given at different times, and that the electors had voted in all the States except one, and that on the electors of that State the choice depended ; a great temptation for corruption would be offered. This is in a great measure avoided by having all the votes given on the same day.

"In pursuance of the authority given by this clause, Congress, in 1792, passed an act declaring that the electors shall be appointed in each State within thirty-four days preceding the first Wednesday in December in every fourth year, succeeding the last election of President, according to the apportionment of senators and representatives then existing. The electors chosen are required to meet and give their votes on the said first Wednesday in December, at such place in each State as shall be directed by the legislature thereof. They are then to make and sign three certificates of all the votes by them given, and to seal

up the same, certifying on each that a list of the votes of such State for President and Vice-President is contained therein, and are to appoint a person to take charge of and deliver one of the same certificates to the President of the Senate at the seat of government, before the first Wednesday of January then next ensuing; another of the certificates is to be forwarded forthwith by the Post-office to the President of the Senate at the seat of government; and the third is to be delivered to the judge of the district in which the electors assembled." *

Art. 2, § 1, 4. *"No person except a native-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States."*

That the office of President should not be held by a foreigner was clear to all the members of the Federal Convention. The exception in favor of those who were citizens at the time of the adoption of the Constitution was a compliment to those patriotic citizens of foreign birth who had deserved well of their adopted country. All that class have passed away, and none are now eligible to the office of President or Vice-President but native-born citizens.

* Story.

The qualification as to age was designed to secure maturity of character and experience.

A residence in the country is required, that a knowledge of its affairs may be had, and due interest in its welfare felt. Both of these might be impaired by long residence in a foreign land. It is also a necessity, that the people may have a full opportunity of knowing the character and merits of the candidate.

A temporary residence abroad in the service of the country, as an ambassador or public agent, does not interrupt one's residence as a citizen so as to disqualify him for the office of President.

Art. 12 of Amendments. 1. "*The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all the persons voted for as President, and of all the persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted; the person having the*

greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President.

2. "*The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators; a majority of the whole number shall be necessary to a choice.*

3. "*But no person constitutionally ineligible to the*

office of President, shall be eligible to that of Vice-President of the United States."

This is not the mode of choosing the President originally provided by the Constitution, but is the result of an amendment adopted in consequence of the evils which were found to result from the first mode.

The original provision was, that two persons were to be voted for by the electors, one of whom, at least, was not to be an inhabitant of the same State with themselves. The one having the highest number of votes, if a majority of all the votes, was to be President. If more than one had a majority, and an equal number of votes, the House of Representatives was to choose one of them for President. When thus choosing a President, the House was to vote by States, each State having one vote, and a majority of all the States was necessary to a choice.

If no person had a majority of the votes of the electors, then, from the five highest on the list, the house was to choose a President.

In every case, after the choice of a President, the person having the greatest number of votes of the electors was to be Vice-President. If two or more had an equal number of votes, the Senate was to choose, by ballot, the Vice-President.

At the first Presidential election, Washington was unanimously chosen President, and John Adams Vice-President.

At the second election, Washington received the votes of all the electors, and Adams a majority.

At the third election, Adams was elected President, and Jefferson Vice-President.

At the fourth election, Jefferson and Burr received a majority of the votes of all the electors, and an equal number of votes. The choice devolved upon the House of Representatives. After a great many ballotings, resulting in a tie, Jefferson was at length chosen in consequence of some of his opponents' casting blank votes. Burr became Vice-President.

The Constitution was then amended by the adoption of the mode of choice given above.

Since then, the choice has once devolved the House of Representatives, and the result was in the choice of John Quincy Adams. General Jackson was one of the candidates, and received the highest number of the votes of the electors. Adams was one of the three having the highest number of votes, and hence was eligible for election by the House.

Art. 2, § 1, 5. "*In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office. the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act*

accordingly, until the disability be removed, or a President be elected."

The wisdom of this provision is seen in the fact that, on three occasions, the President has died in office, and his constitutional successor has taken his place without the slightest interruption of the affairs of government. By the death of President Wm. H. Harrison, John Tyler became President; by the death of President Taylor, Millard Fillmore; and by the death of President Lincoln, Andrew Johnson.

Congress has directed, that, in case of the disability both of the President and Vice-President, the President of the Senate *pro tempore*, and in case there is no president, then the Speaker of the House of Representatives, shall act as President.

Art. 2, § 1, 6. "*The President shall, at stated times, receive for his services a compensation, which shall be neither increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.*"

This provision renders the President independent of Congress. If his salary could be increased, he might be tempted to conform to the wishes of the house to gain an increase of income. If his salary could be diminished, the house might use that power to make him subservient.

The salary of the President remained as fixed by

the first Congress, at $25,000 a year, until 1873, when it was raised to $50,000 a year.

Art. 2, § 1, 7, 8. *"Before he enter on the execution of his office, he shall take the following oath or affirmation: 'I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.'"*

CHAPTER XV.

THE EXECUTIVE (CONTINUED).

Art. 2, § 2, 1. "The President shall be Commander-in-Chief of the Army and Navy *of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, on any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."*

The military power is that by which the laws, if need be, are to be executed, and peace maintained, and invasion resisted. It should therefore be under the control of the executive. This power does not make the President a military despot. He is bound to exercise it in accordance with the Constitution and laws. Failing to do so, he is liable to impeachment, and dismissal from office.

The heads of departments are the constitutional

advisers of the President. Their advice will be given under a deeper sense of responsibility, if it be in writing, and liable to be published. On all important occasions, Washington required the written advice of the heads of departments.

The pardoning power is a consequence of the imperfection of law and human nature. A man may be convicted of a crime on false testimony. The falsehood may be discovered, but the court cannot reverse its decision. The pardoning power here comes in, and repairs, as far as may be, the injustice of the law, or rather of the judicial decision. The pardoning power was not given to the executive that he might have scope for exercising his tenderness of heart. It was given to further the ends of justice.

The exception to the President's power of pardon relates to cases of impeachment. If the President could pardon those convicted on impeachment, he could make his favorites safe, whatever political offences they might commit.

There is also an implied limitation to the pardoning power, in case of punishment, by each branch of the legislature, for contempt of the House and violation of its rules. If the President could set at liberty one imprisoned for contempt of Congress, they would be wholly dependent on his good will for the exercise of their powers.

Art. 2, § 2 2. "*He shall have power, by and with*

the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers, and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments."

The power of making treaties is a most important power. On its exercise depends in a great measure the relation of the country to foreign powers. The treaties made by the President, and approved by the Senate, become the supreme law of the land. Still, this does not give the President and Senate power to override the Constitution. A power given by the Constitution must be exercised in conformity to it.

The power to declare war, we have seen, is vested in Congress. The power to make peace comes under the treaty-making power, and hence belongs to the President and Senate.

The power to make treaties is wisely lodged with the President and Senate. The President, having a constant eye upon foreign affairs, can more promptly meet the demands of emergencies, than a legislative

body. Secrecy is also supposed oftentimes to be necessary in managing affairs with foreign nations, and secrecy is impossible in a legislative body. Negotiations can be conducted by the President or Secretary of State, without communicating with the public or any department till they are finished, when they are laid before the Senate. When a treaty has been approved by the Senate, and signed by the President, it goes into operation according to the terms therein contained.

The Senate is more suitable than a larger and more popular body, to consider the great questions relating to the intercourse of nations. The assent of two-thirds of the Senate must be given in order to render a treaty binding. No hasty or unwise measure would be likely to receive the solemn assent of two-thirds of a body of men of such talents, experience, and integrity, as are supposed to constitute the Senate.

The Constitution does not state expressly whether the Senate shall be consulted in the formation of treaties, or simply when the treaty has been formed. Washington thought that the executive might require the Senate to advise before as well as after the formation of a treaty. "Since that period, the Senate have been rarely if ever consulted, until after a treaty has been completed, and laid before them for ratification. When so laid before the Senate, that body is in the habit of deliberating upon it, as indeed it does

upon all executive business, in secret, and with closed doors. The Senate may wholly reject the treaty, or advise and consent to a ratification of part of the articles, rejecting others, or recommend additional or explanatory articles. In the event of a partial ratification, the treaty does not become the law of the land until the President and the foreign sovereign have each assented to the modifications proposed by the Senate."

The President is not bound to ratify a treaty when approved by the Senate. He may still constitutionally decline to ratify it.

Suppose the President and Senate make a treaty, the execution of which requires a sum of money to be drawn from the national treasury. No money can be drawn from the treasury except by direction of Congress, that is, the Senate and House of Representatives. Are the representatives bound to vote for the appropriation required by the treaty, or may they examine the treaty, and withhold the appropriation if they do not approve it?

It was claimed during the second administration of Washington, that the house had a right to withhold the appropriation if it deemed the treaty unwise. An earnest debate took place in the house on this subject, when the executive called on Congress to furnish the funds needed to carry into effect the treaty made with Great Britain by John Jay, in 1794. Wash-

ington held that the Constitution had given to the President and Senate the power to make treaties, and accordingly he declined to lay before the house documents relating to the treaty, which they requested.

If it is optional with the house to grant or refuse the appropriations required by a treaty, then the President and Senate do not possess power to make treaties: but the Constitution gives them this power.

By the Constitution of Great Britain, the king possesses power to declare war and make peace. But, as we have seen, he cannot carry on war unless the House of Commons are ready to furnish the means. He may be compelled to make peace whenever the house desires it. They have nothing to do but to withhold supplies, and the war must cease.

The power of appointing to office is vested in the President, by and with the advice and consent of the Senate. In Great Britain, the ministers, judges, and all high officers are appointed by the king, that is, by the ministers acting in his name.

By the provision of the Constitution requiring the consent of the Senate, a restraint is placed upon the executive, but not a restraint that will be likely to interfere with the efficient exercise of his powers. The Senate may prevent the appointment of incompetent or corrupt favorites of the President. They will rarely refuse to confirm a man of undoubted

ability, integrity, and fitness for the office to which he may be nominated.

The power to appoint ambassadors implies power to appoint diplomatic officers of lower rank. An ambassador is a diplomatic officer of the highest rank. Next in order come envoys and ministers plenipotentiary; then ministers resident; and lastly, chargés d'affaires. There is, however, no essential difference between ambassadors and ministers plenipotentiary.

Consuls are not regarded as diplomatic officers. They are "commercial agents of the Government, appointed and resident in a foreign country, to attend to the commercial rights and privileges of their own country, and its citizens in such foreign country."

The Constitution is silent as to *the power of removal from office.* It would be natural to conclude that the power which appoints to office should have the power to remove. But in Washington's administration, a majority of Congress were of opinion that the power of removal from office rested with the President alone. At the same time, it was thought that the President would be liable to impeachment, if he were to remove an officer without due cause. To make room for a political partisan, would not have been deemed good cause for removal in the days of Washington. Removal from office on account of difference in political opinions was unknown in the early days of the republic.

Art. 2, § 2, 3. "*The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.*"

This power is necessary to *the conduct of public affairs.* It is not, perhaps, sufficiently well guarded. The President may, to all intents and purposes, keep a man in office contrary to the advice and consent of the Senate. Suppose he removes the Secretary of State, and appoints another, in the recess of the Senate. In December, Congress assembles; but the President need not lay the appointment of the Secretary of State before the Senate, until just as the session is about to expire. The Secretary's commission is good till the end of the session. Suppose that, at the end of the session, his name is sent to the Senate and is rejected. His commission is at an end, but the President may decline to fill the vacancy, and may re-appoint him the day after the session has closed. His commission is then good till the expiration of the next session of the Senate. This abuse of this constitutional provision is not likely to occur.

Art. 2, § 3. "*He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he may judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them*

with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States."

It is customary for the President to send a message to Congress at the opening of each session, in which he recommends such measures, and makes such suggestions, as he may see fit. The British Parliament is opened by a speech from the throne. Washington addressed Congress at the opening of the session in a speech; Adams followed his example. Jefferson adopted the practice of sending a message, and his example has been followed by all his successors.

It is necessary that the President should have the power of calling special sessions of Congress. Events, like the firing upon Fort Sumter, may occur in the recess of Congress, which may require immediate legislative action.

In monarchical governments, ambassadors, and other ministers above the chargé d'affaires, are received by the sovereign. The President receives ambassadors and all other ministers sent to the United States. This is not a mere form. Grave consequences may be connected with the exercise of this power. To receive an ambassador is to recognize the country from which he comes as belonging to the commonwealth of

nations. Suppose Ireland were to rebel against the British government, and establish a separate government, and send an ambassador to the United States. To receive him would be tantamount to recognizing Ireland as an independent nation. If the President should make such a recognition, the Constitution has nowhere said that Congress may repudiate said recognition.

The President may refuse to see an ambassador or public minister. Should he do so, his conduct would be likely to give offence to the nation whence the minister came, but it would not afford any just cause of war. According to the law of nations, one nation may lawfully refuse to receive the ambassador of another nation.

Art. 2, § 4. "*The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.*"

"All officers of the United States who hold their appointments under the National Government, whether their duties are executive or judicial, in the highest or in the lowest department of the government, with the exception of officers in the army and navy, are properly civil officers within the meaning of the Constitution, and liable to impeachment."

By the Constitution, *impeachment is confined to officers of the government.* In England, all the king's

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subjects may be impeached by the House of Commons, and tried by the House of Lords, and punished, if declared guilty.

The executive power of the English government is vested in the king, who at his coronation is sworn to govern the realm "according to the statutes in parliament agreed on, and the laws and customs of the same."

The king appoints his ministers, who perform all executive acts in his name, and are responsible to the nation. It is a maxim of the English Constitution that "the king can do no wrong;" but if his ministers do wrong, they cannot plead the king's commands in justification.

The ministers are termed the administration. The character of the administration depends upon the character of the majority of the House of Commons. If a majority of the House are whigs, the administration will be a whig administration—that is, the king will send for a leading whig statesman, and tell him to form an administration. He selects such men for his associates as he thinks best, and they are appointed by the king. The person who forms the administration is called the Prime Minister, and selects his office, commonly that of the first Lord of the Treasury.

The cabinet, or cabinet council, consists of such of the prominent ministers as are more immediately in the confidence of the king, who are summoned to consult

upon executive matters. All the members of the ministry do not belong to the cabinet.

If, while a whig ministry are in power, the political character of the House of Commons should change, and a majority become tories, one of two things would take place. The ministers would resign and a tory administration would be formed, or parliament would be dissolved and a new election held. If, in the new parliament, the majority were whigs, the ministers would remain in office: if not, they would resign. Thus, while the ministers are said to hold office at the will of the king, they really hold office at the will of the majority in the House of Commons. Changes in the administration are consequently more frequent in England than in the United States.

When the English ministers go out of office, they are entitled to pensions for life. The retiring pension of the Lord Chancellor is $25,000 a year.

The king is commander-in-chief of the army and navy, appoints all military and naval officers, and can raise and regulate armies and fleets, provided parliament furnish him with the means. He has the sole power of erecting courts of judicature, and of appointing judges, who hold office during good behavior.

The Privy Council consists of such persons as the king sees fit to appoint. Its dissolution takes place six months after the death of the king, unless otherwise determined by his successor.

The privy council have power to decide questions relating to colonial charters and rights. The appeals of the American colonies before the Revolution were to the king in council—meaning the privy council.

Orders in council are orders issued by the king, with and by the advice of the privy council. These orders usually relate to matters connected with commerce.

CHAPTER XVI.

THE JUDICIAL DEPARTMENT

THE office of the **judiciary department** is to interpret and apply the laws. Security of person and property depends more upon the stability and integrity of the judiciary than upon any other department of the government. Where there is no security of property, where justice is not administered between man and man, the fundamental condition of national prosperity is wanting.

The framers of the Constitution were duly impressed with the importance of an able and independent national judiciary.

Art. 3, § 1. "*The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.*"

The national courts were organized by act of Congress, Sept. 24, 1789. The act was drawn up by Oliver Ellsworth, afterwards Chief Justice of the United States. Such changes and modifications were made from time to time as the increase in population and territory required. The last act of Congress respecting the organization of the courts was passed in 1874.

There are three national courts; viz., the Supreme Court, the Circuit Courts, and the District Courts.

The Supreme Court consists of a chief justice and eight justices, any six of whom constitute a quorum. It holds one term annually, commencing on the second Monday in October, at Washington. Except in a few cases which will be mentioned hereafter, it is occupied in hearing and deciding cases on appeal from other courts. As this is the highest judicial tribunal known to the Constitution, there is no appeal from its decisions.

The United States are divided into nine judicial circuits. For each circuit a judge is appointed. They are called *Circuit Judges.* They reside in their respective circuits. The justices of the supreme court are required to render certain services in the circuit court. They must attend at least one term of a circuit court, in every period of two years.

The first circuit includes Rhode Island, Massachusetts, New Hampshire, and Maine.

The second, Vermont, Connecticut, and New York

The third, Pennsylvania, New Jersey, and Delaware.

The fourth, Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

The fifth, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

The sixth, Ohio, Michigan, Kentucky, and Tennessee.

The seventh, Indiana, Illinois, and Wisconsin.

The eighth, Nebraska, Minnesota, Iowa, Missouri, Kansas, and Arkansas.

The ninth, California, Oregon, and Nevada.

The United States are also divided into fifty-eight districts, in which district courts are held. To each district a district judge is appointed, except that the States of Alabama, Georgia, Mississippi, South Carolina, and Tennessee have each one district judge. The District Courts are held by the District Judges.

There is a Supreme Court of the District of Columbia, with a chief justice and three judges.

The other officers of the national courts besides the judges, are the Attorney-General, the District Attorneys, the Marshals, and the Clerks.

The Attorney-General is appointed by the President, with the advice and consent of the Senate, and is a member of the cabinet. It is his duty to prosecute and conduct all suits in the Supreme Court, in which the United States are concerned, and to give his

advice and opinion upon questions of law when required by the President, or the heads of the departments.

Each judicial district has a district attorney. The district attorneys prosecute and conduct all suits in the circuit and district courts, in which the United States are concerned. They often receive instructions from the attorney-general.

Each judicial district has also a Marshal. His duties are similar to those of a sheriff. He is to the United States courts what the sheriff is to the superior State courts.

"A Sheriff is the officer to whom all the precepts of the superior courts of the several States are always directed for execution. In the commencement of civil causes, he serves the writ, and in cases requiring it, arrests and takes bail. When a cause comes to trial, he summons and returns the jury; and when it is determined, he sees the judgment of the court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury; he has the custody of the delinquent, and he executes the sentence of the court, though it extend to death itself."*

The Clerks are appointed by the judges, the appointment being thus vested by a law of Congress. The Supreme Court, and each of the district courts, has its clerk. The clerk has the custody of the seal and

* Burrill.

records of the court, and signs and seals all processes and records of the proceedings and judgments of the court. He receives the moneys paid into the court, and at every regular session exhibits an account of all the moneys remaining in court. The clerk of the district court is, *ex officio*, clerk of the circuit court in that district.

The judges of the United States courts are appointed by the President, with the consent of the Senate, and hold office during good behavior. In regard to the mode of appointment and the tenure of office, there was but one opinion among the framers of the Constitution.

It is asked, Why should not the judges, as well as the members of the legislature, be elected by the people? The reply is, such a course should be pursued as will result in securing the most competent and upright judges. Our fathers thought that the President and Senate would be better qualified than the mass of the people to select men for judges.

It is desirable that the judges be independent, so that they may not be in danger of being biased by their interest, in the exercise of their official power. To secure this end, the tenure of office is not made to depend upon the will of any men in office, nor upon the will of the people, but upon the good behavior of the judge. If he is faithful to his trust, no earthly power can remove him. If he is unfaithful, he may

be impeached by the House of Representatives, and convicted and removed from office by the Senate.

In monarchical governments, if the judge holds office at the will of the monarch, he must, when called to give a decision in which the monarch has an interest, decide so as to please him, or he may be turned out of office. The judges of England formerly held office at the will of the king. They were compelled to be subservient to the court, or lose their places. England owes much to those judges, who, under such circumstances, decided according to law and justice, and preferred losing the emoluments of office to deciding contrary to the right.

If the judges are elected by the people for a limited time, they must please the dominant party, if they would secure a reëlection. They may thus be as subservient to a party as the judges of England, in former days, were to the court.

It is objected that the tenure of office during good behavior has a tendency to make men arbitrary and haughty. If the judges make arbitrary decisions, they are liable to impeachment. Haughtiness of manner may not be pleasant; but a judge of haughty manners who decides right, is better than a judge of pleasant manners who decides wrong.

The compensation of the judges is fixed by Congress. If it could be diminished during their continuance in office, they would not be independent of the

legislative department. Congress might starve them into subserviency.

Art. 3, § 2, 1. "*The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects.*"

The judicial power extends to all cases in law and equity, arising under the Constitution, laws, and treaties of the United States. A case arises, when a suit is brought by some party in regular form, the decision of which involves the interpretation of some provision of the Constitution, or of some law, or of some treaty.

Suppose a State should pass an act making bank notes a legal tender. A creditor refuses to receive them, and brings a suit to recover his debt. The debtor claims that he has made a legal tender of bank notes. If the case should be decided against the cred-

itor, he would appeal to the United States court, and the court would pronounce the State law making bank notes a legal tender null and void. This would furnish an example of a case arising under the Constitution.

Again, suppose a merchant seeks to evade the law of Congress relating to revenue. His goods are seized and confiscated according to law. This would furnish an example of a case arising under the laws.

Again, suppose a treaty existed beween Great Britain and the United States, in which the latter engaged to prohibit the exportation of arms to Ireland. A citizen of New York is detected shipping arms to Ireland. He is arrested and tried by the United States court, and punished. This would be a case arising under a treaty.

The Supreme Court has jurisdiction in equity as well as law. By equity is meant a system of jurisprudence, the object of which is to secure justice when it cannot be reached by the courts of law. These courts are bound to adhere to the law in their decisions, though the decisions should be manifestly unjust. Equity jurisprudence "is an elaborate system of rules and processes, administered in many cases by distinct tribunals (termed courts of chancery) and with exclusive jurisdiction over certain subjects, such as trusts, infants, and the specific performance of contracts."

In England, and in many of the States, the courts of equity are entirely distinct from the courts of law. The Constitution does not provide for distinct equity courts, but confers equity powers on the judges of the national courts.

The next clause extends the judicial power "to all cases affecting ambassadors, other public ministers and consuls." By the law of nations, ambassadors are not subject to the laws of the country in which they reside. They are subject only to the laws of their own country. This is necessary to their independence. Their rights, powers, and duties are determined by the law of nations, to which all countries are alike subject. If any judicial question affecting an ambassador or other public minister should arise, the highest tribunal of the land is the proper one to entertain it.

"The judicial power of the Constitution extends to all cases of admiralty and maritime jurisdiction." This means that the United States courts shall have all the powers usually possessed by courts of admiralty. Courts of admiralty are those which take cognizance of questions relating to captures and seizures at sea, and all civil and criminal maritime causes. Acts done upon the high sea, where all nations claim a common right and a common jurisdiction, should come exclusively under the cognizance of the national courts. Questions relating to prizes in time of war

constitute cases in admiralty. When two nations are at war, and a vessel of one nation captures a vessel belonging to the other, the captors are not at liberty to appropriate the captured vessel and contents to their own use. The vessel must be sent into port, and the case brought before the court of admiralty. If the court decide that she is a lawful prize, she is given to the captors. If the decision be that she is not a lawful prize, she is restored to the owners, and compensation is ordered for the detention. Vessels really belonging to the enemy often claim to belong to a neutral nation. It is for the court to decide on the validity of the claim. Hence the rights of neutral nations may be involved in the decision of the court of admiralty. As the nation is responsible for the decision, it ought to be made by the national court.

"The judicial power extends to controversies in which the United States shall be a party." By this is meant that the United States can bring a suit in the United States courts, against individuals, or against corporations. A collector fails to pay into the United States treasury the money he has collected. The United States may bring a suit against him and his sureties, and compel payment. This is necessary, that the government may protect its rights.

The judicial power of the Supreme Court extends "to controversies between two or more States." Two

or more States may thus carry on a suit before the Supreme Court, the one as plaintiff, the other as defendant. Controversies often arise between States, and the Constitution wisely refers them for decision to the Supreme Court.

"Between a State and the citizens of another State." This provision authorized individuals in one State to bring a suit against another State. A great many suits were brought against States by their creditors, to enforce the payment of their debts or other claims. This caused an amendment to the Constitution to be adopted, which prevents individuals from bringing a suit against a State. The amendment is as follows: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted *against* one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

"Controversies between citizens of different States." But for this provision, each State would be "obliged to acquiesce in the degree of justice which another State might choose to yield to its citizens." Now, a citizen of New York, having a claim against a citizen of Massachusetts, may bring suit either in the courts of Massachusetts or in the United States courts.

"Controversies between citizens of the same State, claiming land under grant of different States."

The design of this clause is to provide a tribunal having no interest on the one side more than on the other. Suppose citizens of Ohio claim certain lands. The one party claim that the lands were granted them by Connecticut, and the other party claim that the lands were granted them by Ohio. Both claims cannot be valid. The United States court is evidently the suitable one to make the decision.

"Controversies between a State, or citizens thereof, and foreign States, citizens, or subjects."

Questions in which foreigners are parties are liable to involve national questions, and hence should be decided by national tribunals. A decision in the case of a foreigner, in which the treaty with his country should be disregarded, would be an offence against that nation.

A foreign State cannot become a party in a suit in any of the United States tribunals, unless it gives its consent to the same.

Foreigners residing in the country have a right to sue in the United States courts. In case of war, this right is suspended until peace is restored.

Art. 3, § 2, 2. "*In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such*

exceptions and under such regulations, as Congress shall make."

It will be observed that there are only a few cases in which actions can be commenced in the Supreme Court. The principal business of the Supreme Court is to review, upon appeal, the decisions of the inferior courts.

Art. 3, § 2, 3. "*The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.*"

The trial by jury has been enjoyed in England from the time the *Magna Charta* was granted by King John. It was brought to this country by our fathers, and is rendered doubly secure by this provision of the Constitution.

In cases tried by jury, there are in fact two kinds of judges, the permanent and the transient. The permanent consist of the judge or judges belonging to the court—men supposed to be learned in the law, and possessed of superior talent. The transient are the jurors, who are twelve citizens selected for the occasion. The judge or judges decide all questions of law involved in the case. The jurors decide all questions of fact. No man can be convicted of a crime unless in the judgment of all the jurors he is guilty. Trial

by jury is regarded as the great safeguard of personal liberty.

An additional safeguard against injustice is found in the provision requiring the accused to be tried in the State where the crime was committed. If a trial could be ordered in a distant State, the accused might be unable to secure the attendance of the witnesses. It may be said that it is not probable that such a manifest departure from justice would ever take place; but similar acts of injustice have been perpetrated, and it is wise to have safeguards against them.

We have seen that the Supreme Court has original jurisdiction in only a few cases, and that it is chiefly employed in the exercise of its appellate jurisdiction. "But the exercise of appellate jurisdiction is far from being limited by the terms of the Constitution to the Supreme Court. There can be no doubt that Congress may create a succession of inferior tribunals, in each of which it may vest appellate as well as original jurisdiction. The judicial power is delegated by the Constitution in the most general terms, and may, therefore, be exercised by Congress, under every variety of form of appellate or original jurisdiction."* Appeals may, in many cases, be made from the State courts to the National courts. The framers and friends of the Constitution, pending its adoption by the people, admitted that it was the design of the Con-

* Story.

stitution to extend the appellate power to the State courts. This was made a ground of attack by its enemies.

"It is an historical fact, that the Supreme Court of the United States have, from time to time, sustained this appellate jurisdiction in a great variety of cases, brought from the tribunals of the most important States in the Union."

The power of the National courts to entertain appeals from the State courts is necessary to uniformity of decisions upon all subjects in any way connected with the Constitution and laws of the United States. Different decisions might be made in different States, and if there were no revising authority to control and "harmonize them into uniformity, the laws, treaties, and the Constitution of the United States would be different in different States, and might, perhaps, never have precisely the same construction, obligation, or efficiency in any two States."

The judiciary department of our government has commanded the respect and veneration of the country. John Jay was the first chief justice. Washington offered him his choice of places when organizing the government, but intimated his belief that the judiciary was his proper place.

When he resigned in order to become Governor of New York, Oliver Ellsworth was appointed chief justice. On his resigning, in consequence of having

been appointed Minister to France, John Marshall of Virginia was appointed. He discharged the duties of the office for thirty-five years. He ranked among the ablest jurists of his time.

The superior courts of England are the court of chancery, and the three common law courts of king's bench, common pleas, and exchequer. They are all held at Westminster, and are often termed the Courts at Westminster.

The court of chancery is the highest court in the kingdom, and is both a court of equity and of common law. The equitable jurisdiction embraces the principal and most important business of the court.

"There are, in fact, five superior courts of chancery in England, viz: the *High Court of Chancery*, presided over by the Lord High Chancellor of Great Britain, to whom an appeal lies from the others; the *Court of the Master of the Rolls*, who is assistant to the Lord Chancellor; when present, and his deputy when absent; and the *Court of the Vice-Chancellor of England.* Two additional vice-chancellors have been recently appointed, with powers precisely similar to those of the vice-chancellor of England."*

The king's bench is the highest court of common law in England. It consists of a chief justice and four associate or puisné justices, as they are termed. "It takes cognizance both of criminal and civil causes; the

* Burrill.

former in what is called the *crown* side or crown office, the latter in the *plea* side of the court. Anciently its jurisdiction was confined to criminal matters and pleas of the crown, and to civil actions of trespass, but it gradually usurped a jurisdiction over all actions between subject and subject, except real actions, in which it is now confirmed."

Real actions are actions brought for the recovery of real property, such as houses and lands.

The court of common pleas consists of a chief justice and four other judges. This court has always exercised an exclusive jurisdiction over real actions.

The court of exchequer is inferior in rank to both the king's bench and the common pleas. Its judges are termed barons. It consists of a chief baron and four associate barons. It was originally intended principally to order the revenues of the crown, and to recover debts due the king, but it has long possessed the character of an ordinary court of justice between subject and subject. In fact, nearly all cases between plaintiff and defendant may be indiscriminately tried in any of the three courts.

From the court of chancery, and from the courts at Westminster, an appeal lies to the House of Lords. The House of Lords is thus the highest judicial tribunal in Great Britain.

The lords, when holding a judicial session, request the attendance and advice of the judges of the superior courts, and the decisions are commonly made in accordance with their advice and that of the members learned in the law.

By an Act of Parliament in 1873, the appellate jurisdiction of the House of Lords was abolished and given to a Supreme Court of Judicature, formed by consolidating the Courts of the Queen's Bench, the Common Pleas, the Exchequer, the Court of Chancery, and the Courts of Admiralty and Probate. It consists of two divisions, viz.: Her Majesty's High Court of Justice, and Her Majesty's Court of Appeals. The latter is substituted for the Court of Chancery.

CHAPTER XVII.

TREASON—CITIZENSHIP—ADMISSION OF NEW STATES—AMENDMENTS.

Art. 3, § 3. "*Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.*"

Treason is regarded as the highest crime that can be committed against civil society. In past ages the term was a very indefinite one. Men have been convicted and punished for treason for a great variety of acts. Tyrannical governments have often disposed of obnoxious persons, by finding them guilty of treason. This occurred so frequently, even in England, that in the reign of Edward III. Parliament interfered by declaring and defining the different branches of treason. This clause of the Constitution is taken from said act of parliament. It secures every one against

the charge of treason unless he has made war against the United States, or assisted their enemies.

The Constitution also secures to every one accused of treason a fair trial. No man can be convicted of treason on the testimony of one witness, however explicit and clear his testimony. Nor can he be convicted on his own confession, unless it be made in open court. Confession artfully wrung from him, or false testimony respecting confession, cannot harm him. Thus careful were our fathers in regard to the crime of treason, being led thereunto by the bloody records on the pages of history.

Art. 3, § 3, 2. *"The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."*

"The punishment of high treason by the common law, as stated by Mr. Justice Blackstone, is as follows: 1. That the offender be drawn to the gallows, and not be carried or walk, though usually (by connivance at length ripened into law) a sledge or hurdle is allowed, to preserve the offender from the extreme torment of being dragged on the ground or pavement. 2. That he be hanged by the neck and cut down alive. 3. That his entrails be taken out and burned while he is yet alive. 4. That his head be cut off. 5. That his body be divided into four

parts. 6. That his head and quarters be at the king's disposal." *

These refinements in cruelty were in former times literally and studiously executed. Our fathers placed the power of declaring the punishment of treason with Congress. Congress has made the punishment to be death by hanging.

By the common law, corruption of blood and forfeiture of property followed conviction of treason. The person convicted could not inherit property from his ancestors nor transmit it to his heirs. If a man was convicted and executed for treason, and then his father died, his children could not inherit their grandfather's property, for they must claim through Their father, whose blood, being corrupted had lost its inheritable qualities. To prevent the innocent from thus suffering, the Constitution declares that conviction for treason shall not work corruption of blood or forfeiture, except during the life of the person attainted.

Art. 4, § 1. *"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."*

If a case had been tried and decided in a State,

* Story.

and an attempt should be made to bring the same matter into court in another State, the party sought to be injured would procure the record of the former trial, and that would put an end to the proceeding.

Art. 4, § 2, 1. *"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."*

The design of the Constitution was to make *one nation of the States.* As all are citizens of the United States, they are, for the time being, citizens of that State in which they reside. They are, of course, subject to the local regulations of said State. If one of those regulations be, that one must be a resident for six months in order to vote, that regulation does not interfere with this provision of the Constitution.

Art. 4, § 2, 2. *"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."*

This tends to facilitate the execution of justice, and is rendered necessary by that part of the Constitution which requires that the accused be tried in the State where the crime was committed.

In regard to foreign nations, the surrender of

criminals is often made the subject of treaty stipulations.

Art. 4, § 2, 3. *"No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."*

This relates to fugitive slaves. It requires that fugitive slaves be restored to their masters.

As slavery has ceased to exist in the United States, this clause is a dead letter, and discussions growing out of it are at an end.

Art. 4, § 3. *"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress."*

When a new State desires admission to the Union, application is made to Congress. Congress may prescribe the terms on which the applicant may be received, provided said terms are not in conflict with any of the provisions of the Constitution.

Art. 4, § 3, 2. *"The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to*

the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

Under this provision, Congress has erected territorial governments, which have exercised authority till they were superseded by State governments.

The territorial governments consist of a governor appointed by the President and Senate, a legislature chosen by the people, and judges appointed by the President and Senate. These judges are not regarded as belonging to the national judiciary. Their term of office expires when the territory becomes a State, if they are not sooner removed. The people of the territory elect a delegate, who has a seat in the House of Representatives, and can take part in debates relating to the territory, but is not entitled to a vote.

Art. 4, § 4. "*The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive* (*when the legislature cannot be convened*), *against domestic violence.*"

This secures to each State, for its protection against foreign and domestic foes, the power of the United States.

Art. 5, § 1. "*The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to the Constitution, or, on the applica-*

tion of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

The Constitution thus provides in two ways for its amendment. The first is the one that has hitherto been adopted. No amendment was to affect the clause relating to the prohibition of the slave trade, and the clause relating to a capitation tax. Time, and the course of events, have rendered those restrictions needless. That forever securing to all the States equal suffrage in the Senate, remains.

Art. 6, § 1. "*All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.*"

This is simply affirming a principle of the law of nations.

Art. 6, § 2. "*This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.*"

If this does not express the supremacy of the Constitution to all State constitutions, laws, and ordinances, language cannot be so framed as to do it.

Art. 6, § 3. "*The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.*"

The State officers are concerned in many ways in carrying into effect the provisions of the Constitution of the United States, hence it is proper that they be bound by oath to support it. Members of Congress, executive, or judicial officers, cannot labor to overthrow the Constitution and laws of the United States without incurring the guilt of perjury.

Art. 7. "*The ratification of the Conventions of nine States shall be sufficient for the establishment of*

this Constitution between the States so ratifying the same."

It will be recollected that when the Constitution went into operation, eleven out of the original thirteen States had ratified the Constitution.

CHAPTER XVIII.

AMENDMENTS.

When the Constitution was laid before the people, it was objected that it did not contain a bill of rights. "A bill of rights is a written instrument, containing a public declaration of certain general rights of the people, which are held fundamental to their security and protection."

The true answer to this objection is found in the fact that the sole object of the Constitution was to provide for and secure the rights of the people. But to meet this and other objections, the first Congress under the Constitution proposed certain amendments, which, being ratified by the legislatures of three-fourths of the States, became a part of the Constitution. These amendments are as follows:

Art. 1. "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to*

assemble, and to petition the government for a redress of grievances."

The evils resulting from a *connection of the State with the Church* are well known. The experience of some of the colonies, where preference had been given to particular denominations, confirmed the aversion of the people to the union of Church and State. Hence they desired to have in the Constitution a provision guaranteeing religious freedom.

Freedom of speech and of the press is essential to liberty. It was well to place the matter beyond possibility of doubt, by expressly forbidding Congress to encroach on freedom of speech or of the press.

Freedom of speech and of the press may degenerate into licentiousness. This is partially checked by laws forbidding slander. Great evils may result from the licentiousness of the press, but greater evils would follow the power of the government to interfere with its freedom.

There are extravagant and unsound notions current in regard to the *freedom of the press.* Some seem to think that it secures impunity in doing every kind of wrong that can be perpetrated by means of the press. Such freedom, or license, for it cannot properly be called freedom, would be incompatible with the existence of a free government. An eminent jurist has remarked that freedom of the press consists in laying no *previous* restraints upon publications, and

not in freedom from censure for criminal matter when published. "Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press. But if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity." "To censure the licentiousness is to maintain the liberty of the press." Chancellor Kent remarks: "It has become a constitutional principle in this country, that every citizen may freely speak, write, and publish his sentiments on all subjects, *being responsible for the abuse of that right;* and that no law can rightfully be passed to restrain or abridge the freedom of the press."

The right of petition is expressly provided for, though in a popular government it would seem that such a provision could scarcely be necessary. The right to petition government implies the right to have the petitions received. The refusal of Congress to receive petitions respectfully worded and properly presented, would be a violation of this clause in the Constitution.

Art. 2. "*A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.*"

A well-regulated militia supersedes the necessity of a standing army. The right to keep and bear arms gives the people power to resist effectually, if

need be, the encroachments of usurpation and arbitrary power. To the fact that nearly all the American people are accustomed to the use of arms, is it in a great measure owing that large armies can be organized and disciplined in a very short time.

Art. 3. *"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law."*

This guards against an evil practically unknown in this country, but well known in former times, in Great Britain and other countries. Many of the most valuable provisions of our Constitution are owing to the example furnished by Great Britain.

Art. 4. *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."*

This is necessary to that complete personal security which every government should furnish to its subjects. It was suggested by the practice for a long time common in England, of issuing general warrants to arrest all persons (without naming them) engaged or suspected to be engaged in certain transactions. This rendered every man liable to arrest.

Art. 5. *"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."*

A grand jury is a body of men selected in a manner prescribed by law, and sworn to make inquiry, and present all offences against the government in the district for which they were selected. "The grand jury may consist of any number not less than twelve nor more than twenty-three; and twelve at least must concur in every accusation. They sit in secret, and examine the evidence laid before them by themselves." An accusation is laid before them. If they believe it to be true, they write on the back of it, "A true bill." The party thus accused stands indicted, and may then be tried by a court of justice.

"The indictment must charge the time, and place, and nature, and circumstances of the offence, with clearness and certainty, so that the party may have full notice of the charge, and be able to make his defence with all reasonable knowledge and ability."

The exceptions to this provision relate to the proper field for the exercise of martial law.

No person can be twice tried for an offence, provided a judgment was rendered in the case. This is to prevent one from being arrested and tried a second time, when perhaps the witnesses who proved his innocence at the former trial are absent or deceased. By this provision, it is possible that a guilty man may escape punishment, but that is far better than that an innocent man should suffer wrong.

No man can be compelled to bear witness against himself. It may seem strange that such a prohibition should be deemed necessary. But there have been, in former times, in some countries, numerous cases in which men were tortured to compel them to bear witness against themselves, or to confess themselves guilty.

Art. 6. "*In all criminal prosecutions, the accused shall enjoy the right to a speedy public trial by an impartial jury of the State or district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.*"

These provisions furnish greater security for per-

sonal liberty, than is furnished by the Constitution and laws of any other country, England not excepted.

Art. 7. "In suits at common law, *where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law."*

This amendment was designed to define and limit the interpretation of that clause in the Constitution which declares that "the Supreme Court shall have appellate jurisdiction *both as to law and fact.*"

Art. 8. " Excessive bail *shall not be required, nor excessive fines be imposed, nor cruel and unusual punishment inflicted."*

The things here forbidden have often taken place in other countries, and human nature is the same in all ages.

Art. 9. *" The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."*

Art. 10. *" The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively,* or *to the people."*

It will be observed that the term "expressly" does not precede the term delegated. The second of the Articles of Confederation declared that each State re-

tained every power and right not "expressly delegated to the United States." The consequence was that Congress was often obliged to usurp powers that it did not possess.

When this amendment was before Congress, it was proposed to insert the word "expressly" before delegated, but the proposition was rejected. It was seen that it was not possible to confine a government to the exercise of express powers. The conferring of a power to do a thing implies the power to use the necessary means. The government must exercise implied powers, unless the Constitution should descend to the most minute details.

The design of the amendment was not to abridge any of the powers granted under the Constitution, but to exclude any interpretation by which other powers should be assumed.

Art. 11, relating to the suability of a State by citizens of another State, and Art. 12, relating to the mode of choosing the President and Vice-President, have already been considered.

Art. 13, 1. "*Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

2. "*Congress shall have power to enforce this article by appropriate legislation.*"

Slavery was abolished by President Lincoln as "a war measure." The thirteenth amendment sanctions the act, and renders it impossible for slavery to exist in the United States.

The first section of the fourteenth amendment declares that all persons born or naturalized in th United States and subject to the jurisdiction thereof, are citizens of the United States, and prohibits the States from abridging their privileges.

The second section declares that Representatives shall be appointed among the several States according to their respective numbers counting the whole number of persons in each State, excluding Indians not taxed. If the right to vote is denied to any male inhabitants the basis of representation is to be proportionally reduced.

The third section declares that no person having taken an oath to support the Constitution, and having participated in the rebellion shall hold any office under the United States, or any State. Congress may, by a vote of two-thirds in each House, remove the disability.

The fourth section renders the debt of the United States of constitutional obligation, and declares the debts incurred in aid of the rebellion, illegal and void.

The fifteenth amendment declares, that "the right of citizens of the United States to vote, shall not be denied nor abridged by the United States, on account of race, color, or previous condition of servitude."

CHAPTER XIX.

THE CONSTITUTIONS OF THE STATES.

When the Revolution took place, the royal governors, judges, and other officers who remained loyal to the king, left the country. The remaining officers, and the colonial assemblies, exercised the powers of government. New Jersey formed and adopted a constitution July 2, 1776—two days before the Declaration of Independence. It contained a provision by which it became null and void in case a reconciliation with the mother country took place.

After the Declaration of Independence, all the States formed and adopted constitutions, except Connecticut and Rhode Island. Those States continued to use their charters—Connecticut till 1818, and Rhode Island till 1842. Of course every thing in the charters relating to the king was regarded as null and void.

Virginia adopted a constitution in 1776; Maryland in 1776; North Carolina in 1776; Delaware in 1776; Pennsylvania in 1776; New Jersey in 1776;

New York in 1777; New Hampshire in 1777; Georgia in 1777; South Carolina in 1778, Massachusetts in 1780; Connecticut in 1818 and Rhode Island in 1842.

All these constitutions have been amended, some of them several times. Jefferson thought that a constitution should be amended every twenty years in order to adapt it to the growing wants of the State. Frequent changes in a constitution tend to diminish the reverence in which it ought to be held.

The first new State formed after the adoption of the Federal Constitution was *Vermont.* It was formed of territory claimed by New York and by New Hampshire. It was admitted to the Union in 1791. Its present constitution was adopted in 1793.

Kentucky formed a constitution in 1790, and was admitted to the Union in 1792. A second constitution was formed in 1799, and a third in 1848–50.

The constitution of Tennessee was adopted February, 1796, admitted June, 1796. This State was formed from territory ceded to the United States by North Carolina.

The constitution of Ohio was formed in November, 1802, and she was admitted to the Union February, 1803. Ohio was formed from the eastern division of the Northwest Territory. This Territory was ceded to the Congress of the United States in 1784 by Virginia. By an ordinance passed by Congress in 1787, slavery was forever prohibited in that territory and the States

to be formed from it. The ordinance provided that not less than three nor more than five States should be formed out of the territory. The prosperous States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, were formed from that territory. The ordinance which forever secured them to freedom, was advocated by some of the most distinguished sons of Virginia, by which State, as we have seen, that vast territory was ceded to the United States.

The constitution of Louisiana was formed January, 1812, and she was admitted to the Union in April, 1812.

This State formed part of the territory purchased from France by President Jefferson, for $15,000,000. Jefferson acknowledged that the Constitution did not authorize the purchase of foreign territory, and intended to appeal to the people to make an amendment to the Constitution, sanctioning the purchase. There was such a general approval of the act, that no such amendment was proposed. It was plainly of the utmost consequence, that the mouth of the Mississippi, the outlet of the Western States, should not be under the control of a foreign power. John Quincy Adams spoke of the purchase as a "splendid violation of the Constitution."

The purchased territory was divided by Congress into the Territory of Orleans and the district of Louisiana. The territory of Orleans formed a consti-

tution, and took the name of Louisiana. The district of Louisiana was subsequently called Missouri.

Indiana adopted a constitution in June, 1816, and was admitted to the Union in December, 1816. Thi State was formed out of the Northwest territory.

Mississippi adopted a constitution in August, 1817, and was admitted to the Union in December, 1817. This State was formed out of territory ceded to the United States by South Carolina and Georgia. It constituted the western part of the ceded territory. The eastern part was then called the Territory of Alabama.

Illinois adopted a constitution in August, 1818, and was admitted to the Union in December, 1818. It was formed out of the Northwest territory.

Alabama adopted a constitution in August, 1819, and was admitted to the Union in December, 1819.

Maine adopted a constitution in October, 1819, and was admitted to the Union in March, 1820. It had previously formed a part of Massachusetts, and was known as the District of Maine.

Missouri adopted a constitution in July, 1820, and was admitted to the Union in March, 1821.

With the application of this State for admission to the Union, began the great struggle to prevent the extension of slavery into the new States. The constitution of Missouri sanctioned slavery. A large majority of the members of Congress from the free States were opposed to admitting her with that con-

stitution. The struggle that took place threatened to rend the Union. It was finally settled by a compromise, brought about mainly by the influence of Henry Clay. By this compromise, the State was admitted as a slaveholding State; but it was stipulated that slavery should never be established in any States formed in future from lands lying north of latitude 36° 30′. This was known as the Missouri Compromise; it was repealed in 1854.

The constitution of Arkansas was adopted in January, 1836, and she was admitted to the Union in June, 1836. This State was formed out of the territory purchased from France.

Michigan adopted a constitution in 1836, and was admitted to the Union in January, 1837.

Florida adopted a constitution in February, 1839, and was admitted to the Union in March, 1845. This State was formed out of territory ceded by Spain to the United States in 1819.

Iowa adopted a constitution in December, 1844, and was admitted to the Union in March, 1845.

Texas adopted a constitution in July, 1845, and was admitted to the Union in December, 1845. Texas was an independent republic formed out of Mexican territory by a successful rebellion.

Wisconsin adopted a constitution in December, 1846, and was admitted to the Union in March, 1847.

California adopted a constitution in November

1849, and was admitted to the Union in September, 1850. This State was formed out of part of the territory ceded to the United States by Mexico in 1848.

Minnesota adopted a constitution in November, 1857, and was admitted to the Union in May, 1858.

Oregon adopted a constitution in November, 1857, and was admitted to the Union in May, 1858.

Kansas adopted a constitution in October, 1858, and was admitted to the Union in January, 1861.

West Virginia adopted a constitution in April, 1862. Certain conditions imposed by Congress having been complied with, she was admitted in June, 1863.

Nevada adopted a constitution in 1864, and was admitted to the Union in October of the same year.

Nebraska was admitted to the Union in 1867, and Colorado in 1876.

All the States that have been added to the original *thirteen* had territorial governments previous to their admission except Vermont, Kentucky, Tennessee, and Maine. Texas was, as has been stated, an independent republic.

The Constitutions of all the States are similar to the Constitution of the United States, and, of course, similar to one another. In all, the powers are divided into the legislative, the judicial, and the executive. The legislative power is vested in two houses, and the mode of making laws the same as that pursued by the Congress of the United States.

The executive power is vested in a governor, whose powers are similar to those possessed by the President of the United States. He is charged with the execution of the laws, and, in most of the States, has a qualified veto on the acts of the legislature, and power to pardon offences against the laws.

Each State has a judicial system analogous to that of the United States, consisting of a supreme court or court of appeals, and inferior courts.

In nearly all the States, the legislature meets annually. The members of the lower house are generally chosen for one year, and those of the upper house for a longer period.

In the New England States, the governors are chosen for one year. In some of the States he is chosen for two years, and in some for four years.

The judges are in some States appointed by the governor and senate, in others they are elected by the legislature, and in others they are elected by the people. There has been, in the mode of appointment and in the tenure of office, a departure from the example of the Constitution of the United States. The judges are, in most cases, elected for a term of years. In all cases, they can be removed from office by impeachment, and in some cases by the governor on the address of the legislature.

In some States, there are chancery courts, and in others the powers of chancery are vested in the com-

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mon law courts. In some States there are separate courts for the trial of criminal cases. In incorporated towns and cities, there are usually municipal courts for the trial of causes within the incorporated limits.

The State courts have jurisdiction in all matters in which the United States courts have not exclusive jurisdiction. It extends over all debts, contracts, and crimes, except those which are committed against the laws of the United States. In some matters the National and State courts have concurrent jurisdiction.

The smaller matters of litigation come before a class of magistrates termed justices of the peace. This office is peculiar to the State government. There are generally several justices in each township. In some States, they are elected by the people, and in others appointed by higher officers. Though their jurisdiction is limited, they transact the largest portion of the judicial business of the country.

The State constitutions differ in regard to the length of residence required in order to be a voter in the State. Maine requires a residence of three months, Kentucky of two years.

The State constitutions, while constructed on the same general principles as the Constitution of the United States, are subordinate to it. The State constitution defines the powers of the State government. The main duty of the State government is to make and execute laws required by the peculiar and local

interests of each State. It would be almost impossible for Congress to make all the laws which are necessary for the well-being of all the people scattered throughout the vast territory of the United States. If we examine the statutes of any State, we shall find that a large number of them relate to local interests in different parts of the State. One law relates to a township, another to a county. Consider how many townships and counties there are in the United States, and you will see that it would be impossible for Congress to attend to those numerous interests. It is therefore a wise arrangement by which we have State governments to make laws for the States, and a National Government to make laws for the nation.

The State Governments have certain duties to perform in relation to the National government. They make laws providing for and regulating the election of representatives and senators in Congress, and for the choice of Presidential electors. They also determine the qualifications of the electors for representatives in Congress.

All the States are divided into counties except South Carolina, which is divided into districts ; and Louisiana, which is divided into parishes. In each county, there is a county seat where courts are held, and an office kept for recording deeds and other legal documents.

In some of the States, the officers of the county possess power to legislate in some matters pertaining

to the county. In the State of New York, the board of supervisors, elected by the towns, possess certain legislative powers.

The New England States, New York, and some other States, are divided into townships, having certain political powers. The inhabitants meet annually and elect town officers, lay taxes, and make regulations in regard to local matters.

The township system has an important influence on the political education of the people. Townships furnish examples of pure democracies. The people meet, and choose officers, and make regulations; that is, enact laws for governing the township. Every citizen acts as a legislator. He becomes acquainted, to some extent, with the forms of transacting public business, and with the responsibilities which rest upon him as a member of the body politic.

Where this system does not exist, the people are seldom brought together as citizens, and do not learn to take due interest in public affairs. They are, therefore, liable to be under the control of skillful, unprincipled leaders. One of the ablest political writers of Europe ascribes a large measure of the success of democratic institutions in America to the influence of the township system. The system originated in New England. It has been adopted by nearly all the States.

The crowded population of a city requires rules

and regulations, which are not required by the population in rural districts. These regulations are of a local nature, and cannot be made by the legislature of the State.

The public improvements made for the benefit of the city, must be decided on by the citizens at whose expense they are to be made. It would be unjust to tax the whole State for grading and paving the streets of New York, or for the construction of waterworks for the benefit of the city.

The facilities for crime are much greater in the city than in the country. Criminals seek the city, and are more numerous there than elsewhere. Hence special provisions are necessary for the prevention and prompt punishment of crime.

Hence all large towns have local governments of their own. As the State governments are governments within and under the government of the United States, so the city governments are governments within and under the government of the State. The Legislatures of the States incorporate boroughs and cities. To incorporate a city is to give it a charter conferring certain specific powers. A charter is to a city what a constitution is to a State. It is granted by the legislature instead of being formed and adopted by the people.

All our large cities are incorporated and thus have a city government, in addition to that of the State.

The laws framed by the city government must be authorized by the charter; and be conformed to the laws of the State, just as the laws of the State must be authorized by its constitution, and must be conformed to the laws of the United States.

The charters of the various cities in the Union have a general similarity. The executive power is vested in the mayor, and the legislative in men chosen by the people. They are generally called aldermen, or members of the common council.

CHAPTER XX.

INTERNATIONAL LAW.

A nation is composed of individuals. Each individual is a moral being. In his conduct as a citizen he is bound by the law of rectitude. Hence the nation is bound by the law of rectitude.

The nations of the earth must have intercourse with one another. That intercourse must be regulated by certain rules. The rules that regulate the intercourse of nations constitute international law. That law should consist of rules prescribed by justice. It does consist of the rules that have received the assent of all the nations of Christendom.

International law is not the result of legislative enactment. There is no international legislature to make laws, no international judiciary to interpret them, and no international executive to enforce them. The usages with respect to national intercourse, recognized by all Christian nations, form the body of what is termed international law. These laws have **no**

specific penalties attached to their violation. They are placed under the protection of public opinion. The remedy in case of violation is war.

The following are some of the recognized principles or rules of international law :

"Nations are equal in respect to each other, and entitled to claim equal consideration for their rights, whatever may be their relative dimensions or strength, or however greatly they may differ in government, religion, or manners." Hence no nation has a right to interfere in the domestic concerns of any other nation. Each nation may manage its affairs as it pleases, provided it does not infringe on the rights of other nations. It may change its government for a better one or for a worse one, as it pleases. It may cease to have commercial intercourse with one nation or with all nations, and it may grant to one nation greater privileges than it grants to other nations.

If it pursues a course adapted to injure a nation, that nation may take measures to prevent the threatened injury. If the government of a country should outrage humanity in the treatment of its subjects, then intervention in behalf of humanity would be lawful. On this principle, Great Britain, France, and Russia interfered in favor of the Greeks against the Turks in 1827, and brought to a close a cruel war, and secured the independence of Greece.

One nation is not to judge as to the legitimacy of

the government of another nation. It is bound to regard the existing government, the government *de facto*, no matter by what means it came into power, as the lawful government.

Changes that may take place in the government of a nation do not affect its relations to other nations. Treaties formed with a nation under a kingly government remain in force though that kingly government be changed for a democracy. The United States borrowed money from the royal government of France. It paid it to the revolutionary government. The debt was due, not to the king or to the Directory, but to the French nation.

A nation has exclusive jurisdiction over all its territory, including the rivers and lakes lying wholly within it, and the adjoining sea to the extent of a marine league from the shore. It has a right to try and punish according to its own laws crimes committed on its territory, whoever may be the perpetrator.

The open sea is the common property of all nations. It is the common highway of nations. Each nation has exclusive jurisdiction over its vessels on the high seas.

When a river separates two countries, the dividing line runs along the centre of the channel. Both nations have a right to use its waters for purposes of navigation.

When a navigable river rises in one country and flows through another in its passage to the sea, the inhabitants of the upper country have a right to the navigation of the river to the sea, under such regulations as may be necessary to the safety of the lower country.

Foreigners resident in a country are subject to its laws. They are entitled to protection, and if, while permitted to remain, they are oppressed, their native country will have to seek redress in their behalf. They can claim protection and justice, though they cannot claim all the privileges of citizens.

The following persons are not subject to the laws in the land of their temporary sojourn :

1. **Sovereigns** and their attendants travelling abroad. 2. Ambassadors and the members of their suite and family.

Ambassadors possess immunity from the jurisdiction both criminal and civil, of the country in which they reside. They are representatives of the country from which they are sent, and are subject to its laws only. Complete independence could not be possessed, if they were not exempted from all responsibility to the laws of the country to which they are sent, and complete independence is necessary to a faithful discharge of their duty. If an ambassador should abuse his privileges and commit crimes, the government to which he is accredited may demand

his recall, or if the case is urgent, may require him to depart within a reasonable time.

3. Officers and crews of public armed ships in foreign ports, while on board their ships. If they go on shore and violate the laws, they may be arrested by the authorities and punished. The crews of merchant vessels have no such exemption.

A government may, if it sees fit, refuse to receive an ambassador; the refusal would not be a just cause for war.

Treaties are made by ambassadors acting under instructions from their government. After the treaty has been signed by the ambassadors, it must be ratified by the sovereign or the government which he represents. The sovereign or government may refuse to ratify the treaty, though the ambassador in making it may have adhered strictly to his instructions.

When a treaty has been violated by one of the parties, the other party is released from obligation to observe it.

If a nation has been treated unjustly by another nation, and redress is refused, resort may be had to war. "*War*," says Chancellor Kent, "is not to be resorted to without absolute necessity, nor unless peace would be more dangerous and more miserable than war itself. An injury to an individual member of a State is a just cause of war, if redress be refused; but a nation is not bound to go to war on so slight a founda-

tion, for it may of itself grant indemnity to the injured party, and if this cannot be done, yet the good of the whole is to be preferred to the welfare of a part. Every milder method of redress is to be tried before the nation makes an appeal to arms."

A formal declaration of war, and notice thereof to the enemy before the commencement of hostilities is not necessary. After a declaration within its own territory, and to its own subjects, a nation may at once commence hostilities.

A state of war renders all commercial intercourse between the citizens of the nations at war, unlawful. All trading with the enemy is a crime, unless the government has granted the parties a special license for so doing.

In case of an invasion, private persons making no resistance are not to be molested, and private property is not to be confiscated.

The government which declares war can neither detain those subjects of the enemy who are in its dominions at the time of the declaration of war, nor their effects. They can remain during good behavior, and retain their property, unless formal notice with adequate time, is given them to withdraw their persons and property. They must not, however, carry on any trade with the hostile country. Permission thus to remain is often made the subject of treaty stipulation.

The Supreme Court of the United States has decided that an enemy's property found in the country when war takes place, is liable to confiscation, but that a legislative act is necessary before such property can be judicially condemned. No such act has ever been passed by the Congress of the United States.

Debts due to the subjects of an enemy, and money in the public funds, are by modern usage exempted from confiscation. The decision of the Supreme Court places them on the same ground as other property. It regards them as liable to confiscation by a legislative act.

If a person goes into a foreign country and engages in trade there, international law regards him as a merchant of that country. Hence, in time of war, he is subject to the same commercial rules with respect to the enemy, to which native born citizens are subject.

An enemy's property at sea is liable to capture and confiscation. It may be captured by the national ships of war, or by private vessels commissioned by the government.

Property sailing under the flag and pass of an enemy, though it be the property of a neutral, is liable to be confiscated.

Property which belongs to one of the belligerents at the commencement of a voyage, cannot be trans-

ferred to a neutral during a voyage, so as to protect it from capture. "During peace, a transfer *in transitu* may be made; but when war is existing or impending, the belligerent rule applies, and the ownership of the property is deemed to continue as it was at the time of the shipment, until actual delivery."

Privateering, though authorized by international law, is liable to great abuse. In a treaty made between the United States and Prussia in 1785, it was stipulated that privateering should be abolished between the two countries. This treaty expired in 1799, when the article in regard to privateering was not renewed. In 1856, a treaty was formed between France, Great Britain, Sardinia, and Turkey, on the one hand, and Russia on the other, Austria and Prussia being concurrent parties. These powers united in a declaration that "privateering is, and remains abolished." Other States were invited to adopt the principles of this declaration. The government of the United States, through Hon. William L. Marcy, then Secretary of State, answered that it would agree to an arrangement by which private property at sea should be put on the same footing as private property on land—that is, that private property at sea, unless contraband of war, should be exempted from seizure by public armed vessels of the enemy. "With this," said Mr. Marcy, "we will consent to the placing of privateering under the ban of the law of nations."

All captured property must be brought into port and condemned by a prize court sitting in the country of the captor, or of an ally, before it can be appropriated by the captor.

If property taken by an enemy is recaptured, it does not become the property of the recaptor, but is, on certain conditions, restored to the original owner.

When two or more nations are engaged in war, other nations are bound to maintain an impartial neutrality. The neutral is not to decide which party is in the wrong, and must furnish no aid to one party which it is not equally ready to furnish to the other. Antecedent engagements with one of the parties may be fulfilled, provided those engagements do not require the neutral nation to become a party to the war.

Neutral nations may carry on their ordinary commerce unmolested, with the exception that they must not deal in articles contraband of war. A neutral ship may carry goods belonging to the enemy. The ship may be interrupted in her voyage, and the hostile property seized. In such cases, neither the ship nor the neutral property on board are subject to confiscation.

Neutral property found in the vessels of enemies is not subject to confiscation. The same is true of the property of belligerents when within neutral jurisdiction.

Neutrals are prohibited from carrying articles contraband of war. All warlike stores and other articles directly auxiliary to warlike purposes are contraband of war. Provisions are not generally contraband, but may become so "on account of the particular situation of the war, or on account of the destination."

Neutrals are prohibited from trading with ports that are under blockade; an attempt to violate the blockade subjects the vessel and cargo to confiscation.

The blockade must be an actual, not a mere paper blockade, that is, a blockade by proclamation and not supported by adequate force. A competent force must be stationed near or at the entrance of the port.

Neutrals must have due notice of the existence of the blockade. The fact of sailing for a blockaded port is innocent, unless it be accompanied with knowledge of the blockade. If, while on her course, the vessel is informed of the blockade, an attempt to enter it renders her liable to confiscation. Sailing for a blockaded port, knowing it to be blockaded, in itself constitutes a breach of the blockade.

Neutral vessels in the port at the time the blockade is declared are allowed to depart with goods previously purchased.

A vessel having violated the blockade is liable to capture till the return voyage is at an end. She cannot be captured during a second voyage for an offence

committed during the first. If a vessel is captured at sea, and it subsequently appears that the blockade was raised previously to her capture, she is to be discharged.

Neutrals are prohibited from carrying hostile despatches. The penalty for carrying hostile despatches is the confiscation of the ship and also of the cargo, provided the cargo be the property of the proprietor of the ship, or provided the owners of the cargo knew and approved of the act of the captain in carrying the despatches.

In time of war, public armed vessels of the belligerents may visit and search the vessels of neutrals, in order to determine whether property or despatches of the enemy or contraband goods are on board. This is exclusively a war right, and does not exist in times of peace. The right of search is confined to merchant vessels, and does not extend to public ships of war.

The right of search exists also with reference to the revenue laws of a country. A vessel of a friendly State, within waters under the jurisdiction of a nation, may be boarded and searched on suspicion of violating the revenue laws. If the vessel attempts to escape, she may be chased into the high seas, and, if overtaken, searched.

Public vessels may exercise the right of search on suspicion of piracy, except in the waters of another State.

A truce or armistice is a temporary suspension of the operations of war. "A general truce can be made only by the sovereign power, or its agents specially employed for this purpose. A special or partial truce may be concluded according to the usage of nations by a military officer, even by a subordinate one within his district." * During the truce "nothing can be done to the prejudice of either party by the other which could have been prevented in war."

A treaty is a contract between two or more nations. Each nation determines for itself in whose hands the treaty-making power shall be placed. Treaties, in order to be binding, must be signed by those negotiating them, and ratified according to the requirements of the respective governments of the nations entering into treaty. "A treaty made by a minister abroad, when ratified by his sovereign, relates back to the time of signing. If one party violates the stipulations of a treaty, the other is absolved from obligation to observe it.

"A treaty of peace leaves every thing in the state in which it finds it, if there be no express stipulation on the subject. If nothing be said in the treaty of peace about the conquered country or places, they remain with the possessor, and his title cannot afterwards be called in question." †

Piracy is forbidden by the law of nations. Piracy

* Woolsey. † Kent.

is an offence against all nations, and is punishable by all. The African slave trade is declared to be piracy by the statute laws of England and the United States. As all the nations of Christendom have not united in declaring it piracy, it is not so regarded by the law of nations.

International law is recognized in the legislation of nations. Each nation has laws rendering its violation penal. According to Blackstone, it is in England, held to be a part of the law of the land. The United States, by acts of Congress and by judicial decisions, have endeavored to maintain its obligations.

CHAPTER XXI.

DIFFERENT KINDS OF LAW.

Divine Law is the will of God. His will is obligatory on men as moral beings in whatever way it may be made known. It is made known to us by the exercise of our moral faculties and by revelation. This law is also termed the moral law, the law of rectitude, and the law of nature. All other kinds of law should be conformed to it. No law should ever enjoin or permit that which is not in accordance with the law of God—that which is not right.

Constitutional Law is, as we have seen, a system of fundamental rules for the government of a nation, determining the form of the government and the extent of its powers.

International Law, called also the law of nations, is, as has been stated and illustrated in a former chapter, a system of rules assented to by all the nations of Christendom for the regulation of their intercourse in peace and in war.

Municipal Law is a rule of civil conduct prescribed by the supreme power in a State. "Municipal law is composed of written and unwritten, or of statute and common law."

Statute Law is "the express written will of the legislature, rendered authentic by certain prescribed forms and ceremonies."

"**The Common Law,**" says Burrill, is "that branch of the law of England which does not owe its origin to parliamentary enactment—being a collection of customs, rules, and maxims, which have acquired the force of law by immemorial usage recognized and declared by judicial decisions."

"A great proportion of the rules and maxims which constitute the immense code of the common law," says Kent, "grew into use by gradual adoption, and received from time to time the sanction of the courts of justice without any legislative act or interference. It was the application of the dictates of natural justice and of cultivated reason to particular cases." In the just language of Sir Matthew Hale, the common law of England is "not the product of the wisdom of some one man or society of men in any one age, but of the wisdom, counsel, experience, and observation of many ages of wise and observing men." "But though the great body of the common law consists of a collection of principles to be found in the opinions of sages or deduced from universal and im-

memorial usage, and receiving progressively the sanction of the courts, it is nevertheless true that the common law, so far as it is applicable to our situation and government, has been recognized and adopted as one entire system by the constitutions of Massachusetts, New York, New Jersey, and Maryland. It has been assumed by the courts of justice or declared by statutes, with like modification, as the law of the land in every State. It was imported by our colonial ancestors as far as it was applicable, and sanctioned by royal charters and colonial statutes. It is also the established doctrine that English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country."

The Civil Law is the Roman law as comprised in the Code, Institutes, Pandects, and Novels of Justinian and his successors.

"**The Code,** in twelve books, is a collection of all the imperial statutes that were thought worth preserving from Hadrian to Justinian."

The Institutes or elements of Roman law, in four books, contain the fundamental principles of the ancient law in a small body, for the use and benefit of students at law.

The Pandects are an abridgment, in fifty books, of the decisions of prætors and the writings and opinions of the ancient sages in the law. This work

is supposed to contain the embodied wisdom of the Roman people in civil jurisprudence for nearly twelve hundred years.

The Novels of Justinian are a collection of imperial statutes passed subsequent to the date of the Code, and intended to supply the omissions and correct the errors of the preceding publications. "The great body of the Roman or civil law," says Kent, "was collected and digested by order of the Emperor Justinian in the former part of the sixth century. That compilation has come down to modern times, and the institutions of every part of Europe have felt its influence, and it has contributed largely by the richness of its materials to their character and improvement. With most of the European nations and in the new States in Spanish America, in the province of Lower Canada, and in one of the United States [Louisiana] it constitutes the principal basis of their unwritten or common law. It exerts a very considerable influence upon our own municipal law, and particularly on those branches of it which are of equity and admiralty jurisdiction, or fall within the cognizance of the surrogates' or consistorial courts."

"The history of the venerable system of the civil law is peculiarly interesting. It was created and gradually matured on the banks of the Tiber by the successive wisdom of Roman statesmen, magistrates, and sages, and after governing the greatest people of

the ancient world for the space of thirteen or fourteen centuries, and undergoing extraordinary vicissitudes after the fall of the Western Empire, it was revived, admired, and studied in modern Europe on account of the variety and excellence of its general principles. It is now taught and obeyed not only in France, Spain, Germany, Holland, and Scotland, but in the islands of the Indian Ocean and on the banks of the Mississippi and the St. Lawrence. So true, it seems, are the words of D'Aguesseau, that "the grand destinies of Rome are not yet accomplished; she reigns throughout the world by her reason, after having ceased to reign by her authority."

"**The Canon Law** is a collection of ordinances for the regulation of the polity and discipline of the Church of Rome, consisting for the most part of ordinances of general and provincial councils, decrees promulgated by the popes with the sanction of the cardinals, and decretal epistles and bulls of the popes."*

By a statute of Henry VIII., a portion of the canon law has authority in England. This, together with other portions of the ecclesiastical law of England, is administered by the ecclesiastical courts. There are four ecclesiastical courts in England; an appeal lies from them to the Privy Council. There are no ecclesiastical law courts in the United States.

* Burrill.

Military Law is a system of rules for the government of an army. Martial law is the will of the military commander. When proclaimed in any place, it becomes the supreme law. The civil authority and ordinary administration of the law are either wholly uspended or subjected to military power. Military and martial law are administered by Courts Martial.

Parliamentary Law is a system of rules for regulating the proceedings of legislative and other deliberative bodies. These rules were originally derived from the usages of the British Parliament, and have been, with some modifications, adopted by Congress and the State legislatures, and, so far as they are applicable, by all public assemblies.

"The American or English reader," says Lieber, "brought up, almost from early youth, in an acquaintance with, and in many respects even under the influence of the parliamentary law and usage—for it extends to our very schools—considers many things most natural and hardly worth reflection, which nevertheless required ages to become acknowledged, and for want of which civil liberty or the expediting of common business could not prosper. All usages and laws which relate to debating are of essential importance to liberty itself, and they must be considered as one of the safeguards of liberty which we possess in advance of the ancients. * * * The whole first French Revolution is one continued melancholy in-

stance of the want of this law and usage. For a whole week the members would debate and inflame one another without having even so much as a question before the house."

Dumont, the editor of Bentham's works, relates an instructive anecdote :

"These primary assemblies (to elect deputies) were at a loss how to organize themselves and to make an election. During breakfast at Montreuil-sur-mer, our landlord gave us an account of the tumult and embarrassment of their meetings ; two or three hours had been lost already in palavering and disorder ; a president, a secretary, ballots, or votes, counting the votes—all this was unknown. Dumont and his friends, in mere joke, drew up some regulations. The host, delighted, took them, and when Dumont arrived at Paris, the papers bestowed much praise on the commune of Montreuil on account of the greater order with which the election had been carried on than anywhere else !"

CHAPTER XXII.

PARLIAMENTARY RULES.

In every deliberative assembly, rules are necessary for the preservation of order and the dispatch of business. In legislative bodies, rules are especially important to prevent hasty legislation, and to prevent the majority from trespassing on the rights of the minority.

Every assembly is at liberty to adopt its own rules of proceeding subject to its constitution, if it have one, but the same rules, so far as they are applicable in each case, have been very generally adopted by parliamentary bodies.

It is the duty of the presiding officer to preserve order. He is to decide upon the propriety of motions and upon the order of business. All persons speaking must address him and not the house. If two or more persons rise at the same time, he is to designate the one who shall speak.

Appeals from his decisions may be made to the house, who may sustain or may over-rule his decisions.

Bills may be introduced by a member "on leave," of which one day's notice must be given, and by report of a committee.

Every bill must be read three times previous to its passage. No bill can be twice read on the same day without special order of the house. In most cases, this special order is assumed, and unless objection is made, immediately after the bill is read the first time, the speaker announces "the second reading of the bill." Usually only the title of the bill is read, the reading throughout taking place in the committee of the whole.

A large part of the business of legislative bodies is done by committees. They consider and prepare measures for the action of the house. There are standing committees, and committees appointed for a particular purpose. Committees are usually appointed by the presiding officer; yet the house has power to determine the mode of appointment.

A committee has power to elect one of its number as chairman; but the person first named on the committee usually acts as chairman.

Committees report to the house. Their action has no authority till sanctioned by the house.

Sometimes the house resolves itself by vote into a committee of the whole. When the vote has passed, the speaker leaves the chair, and requests some member to take it. The object of going into the commit-

tee of the whole is to allow greater freedom of debate on the subject under consideration. The rules which limit debate in the house, do not apply to the Committee of the Whole.

When the committee has discussed the bill, a member moves that the committee rise. The speaker then resumes the chair, and the chairman of the committee reports to him what the committee has done. If the subject has not been fully considered, the committee, by the chairman, "reports progress." If the subject has been fully considered, and is ready for a vote, the fact is reported to the speaker, who may at once cause the vote to be taken.

When a bill is introduced and the house is then willing to discuss it, the mover has the right to address the house first.

The house may limit each speaker to a certain time, and that time may be extended only by the unanimous consent of the house.

A motion must be seconded before it can be put. If the speaker or any member desire it, it must be reduced to writing. A motion may be withdrawn at any time before a decision or amendment, provided the previous question has not been seconded.

There is a certain order of precedence in regard to motions. When a question is under debate, no motion can be received but a motion to adjourn, to lay on the table, for the previous question, to postpone to a

certain day, to commit or amend, and to postpone indefinitely. A motion that is not made in accordance with this rule, or not made at the proper stage of the matter under consideration, is said to be out of order, and will not be put by the presiding officer.

A motion to adjourn is said always to be in order; but it cannot be made while a member is speaking, or when a question has been put and the house is engaged in voting. A motion to adjourn may be repeated after some intervening business has been transacted.

A motion to adjourn cannot be amended by adding a particular day, and it is not debatable.

A motion to fix the day to which the house shall adjourn takes precedence of the motion to adjourn. It must be decided without debate.

When a question is under debate, the motion to lay on the table takes precedence of every other motion except the motion to adjourn. A motion to lay on the table must be decided without debate. When a bill is laid on the table it is rarely taken up again during the session. It is usually a mild method of rejecting a bill.

When an amendment is ordered to lie on the table, the subject proposed to be amended goes to the table with it.

When the motion to lay on the table has been made and negatived, and no change has been made in the bill, the motion cannot be repeated.

When the previous question is moved and seconded, it is put in this form: "Shall the main question be now put?" If a majority of those present vote in the affirmative, the presiding officer brings before the house the several amendments to the question, if there be any, and then the question itself. The previous question puts an end to debate. The motion for the previous question is not debatable.

A motion to postpone to a certain day cannot be made a second time on the same day, and at the same stage of the bill. When a bill is postponed to a certain day, it is entitled to be taken up on that day.

When a question is postponed indefinitely, it cannot be acted on again during the session.

When a question is under debate, a motion may be made to refer it to some committee. A motion to commit may be amended by adding instructions, and by striking out one committee and inserting another.

On a motion to commit, the whole question is open to debate.

When an amendment to a bill is moved, if the member who introduced the bill accept the proposed amendment, it becomes a part of the bill. If he does not accept it, the house votes on it before it votes on the bill.

After a proposition has been amended by vote of the house, it cannot be withdrawn, nor after the previous question is seconded.

"On an amendment being moved, a member who has spoken to the main question, may speak again to the amendment."

"A motion to strike out the enacting words of a bill, takes precedence of a motion to amend."

When a question has been voted on and decided, any member who voted with the majority, may move the reconsideration of the question on the same or the succeeding day.

This motion takes precedence of all motions except that for adjournment.

"When a motion to reconsider has been put and decided, it is not in order to repeat the motion."

"When a motion to reconsider has been passed in the affirmative, the question immediately recurs upon the question reconsidered."

"The previous question may be reconsidered, but not after it is partly executed."

"A motion to reconsider is not debatable, if the question proposed to be reconsidered was not debatable." *

* The student is referred to BARCLAY'S DIGEST of the Rules of the House of Representatives, etc.

THE NATIONAL CONSTITUTION.

We have considered, on page 218, the **causes** which led to the formation of the **National Constitution,** in 1787 ; its adoption by the people of the *United States* as the organic law of the land, and the establishment of a **National Government** in accordance with its plan. Let us now take it up and study it carefully, for it is the **Great Charter of our Liberties.** We will begin with the introductory remarks, or

PREAMBLE.

WE the People of the *United States,* in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this **Constitution** for the **United States of America.**

Objects.

ARTICLE I.

SECTION I.

All legislative powers herein granted shall be vested in a Congress of the *United States,* which shall consist of a senate and house of representatives.

Legislative powers.

SECTION II.

1*st Clause.*—The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

House of Representatives.

2*d Clause.*—No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the *United States,* and who shall not, when elected, be an inhabitant of the State in which he shall be chosen.

Qualification of Representatives.

3*d Clause.*—Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the *United States,* and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four,

Apportionment of Representatives.

Pennsylvania eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

4th Clause.—When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Vacancies, how filled.

5th Clause.—The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Speaker, how appointed.

SECTION III.

1st Clause.—The Senate of the *United States* shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Number of Senators from each State.

2d Clause.—Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Classification of Senators.

3d Clause.—No person shall be a senator who shall not have attained to the age of thirty years,

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Qualification of Senators.

and been nine years a citizen of the *United States*, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4th Clause.—The Vice-President of the *United States* shall be president of the Senate, but shall have no vote, unless they be equally divided.

Presiding Officer of the Senate.

5th Clause.—The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the *United States*.

6th Clause.—The Senate shall have the sole power to try all impeachments: When sitting for that purpose, they shall be on oath or affirmation. When the President of the *United States* is tried, the chief-justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Senate, a court for trial of impeachments.

7th Clause.—Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the *United States:* but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Judgment in case of Conviction.

SECTION IV.

1st Clause.—The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may

Elections of Senators and Representatives.

at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2*d Clause.*—The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Meeting of Congress.

SECTION V.

1*st. Clause.*—Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Organization of Congress.

2*d Clause.*—Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Rules of proceeding.

3*d Clause.*—Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Journal of Congress.

4*th Clause.*—Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days,

Adjournment of Congress.

nor to any other place than that in which the two houses shall be sitting.

SECTION VI.

1*st Clause.*—The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the *United States.* They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same ; and for any speech or debate in either house, they shall not be questioned in any other place.

Compensation and privileges of members.

2*d Clause.*—No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the *United States,* which shall have been created, or the emoluments whereof shall have been increased during such time ; and no person holding any office under the *United States,* shall be a member of either house during his continuance in office.

Plurality of offices prohibited.

SECTION VII.

1*st Clause.*—All bills for raising revenue shall originate in the House of Representatives ; but the Senate may propose or concur with amendments as on other bills.

Bills, how originated.

2*d Clause.*—Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve he shall sign

How bills become laws.

it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays ; and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3*d Clause.*—Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the *United States;* and before the same shall take effect shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Approval and veto powers of the President.

SECTION VIII.

1*st Clause.*—The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common

Powers vested in Congress.

defence and general welfare of the *United States;* but all duties, imposts and excises shall be uniform throughout the United States ;

2*d Clause.*—To borrow money on the credit of the United States ;

3*d Clause.*—To regulate commerce with foreign nations, and among the several States, and with the Indian tribes ;

4*th Clause.*—To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States ;

5*th Clause.*—To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures ;

6*th Clause.*—To provide for the punishment of counterfeiting the securities and current coin of the *United States;*

7*th Clause.*—To establish post-offices and post-roads ;

8*th Clause.*—To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries ;

9*th Clause.*—To constitute tribunals inferior to the Supreme Court ;

10*th Clause.*—To define and punish piracies and felonies committed on the high seas, and offences against the law of nations ;

11*th Clause.*—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;

12*th Clause.*—To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years ;

13*th Clause.*—To provide and maintain a navy ;

14*th Clause.*—To make rules for the government and regulation of the land and naval forces ;

15*th Clause.*—To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;

16*th Clause.*—To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the *United States*, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress ;

17*th Clause.*—To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings ; —And

18*th Clause.*—To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the *United States,* or in any department or officer thereof.

SECTION IX.

1*st Clause.*—The migration or importation of such persons

Immigrants, how admitted.

as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2*d Clause.*—The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Habeas Corpus.

3*d Clause.*—No bill of attainder or ex post facto law shall be passed.

Attainder.

4*th Clause.*—No capitation, or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Taxes.

5*th Clause.*—No tax or duty shall be laid on articles exported from any State.

6*th Clause.*—No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

Regulations regarding duties.

7*th Clause.*—No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Money, how drawn.

8*th Clause.*—No title of nobility shall be granted by the *United States:* And no person holding any office of profit or trust under them shall, without the consent of the Congress,

Titles of nobility prohibited.

accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

Powers of States defined.

1*st Clause.*—No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payments of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2*d Clause.*—No State shall, without the consent of the Congress, lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the *United States;* and all such laws shall be subject to the revision and control of the Congress.

3*d Clause.*—No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships-of-war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1*st Clause.*—The executive power shall be vested in a

President of the *United States of America*. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows :

Executive power, in whom vested.

2*d Clause.*—Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress : but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Presidential electors.

3*d Clause.*—The Congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the *United States.*

Time of choosing electors.

4*th Clause.*—No person except a natural born citizen, or a citizen of the *United States* at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years resident within the *United States.*

Qualifications of the President.

5*th Clause.*—In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve

Resort in case of his disability.

on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

6th Clause.—The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the *United States,* or any of them.

Salary of the President.

7th Clause.—Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the *United States.*"

Oath of office.

SECTION II.

1st Clause.—The President shall be commander-in-chief of the army and navy of the *United States,* and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the *United States,* except in cases of impeachment.

Duties of the President.

2*d Clause.*—He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the *United States*, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

His power to make treaties, appoint ambassadors, judges, etc.

3*d Clause.*—The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

May fill vacancies.

SECTION III.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Power to convene Congress.

SECTION IV.

The President, Vice-President and all civil officers of the *United States*, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

How officers may be removed.

ARTICLE III.

SECTION I.

The judicial power of the *United States* shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Judicial power, how vested.

SECTION II.

1*st Clause.*—The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the *United States* shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citi-

To what cases it extends

zens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

2*d Clause.*—In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Jurisdiction of the Supreme Court.

3*d Clause.*—The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Rules respecting trials.

SECTION III.

1*st Clause.*—Treason against the *United States* shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Treason defined.

2*d Clause.*—No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

3*d Clause.*—The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

How punished.

ARTICLE IV.

SECTION I.

Rights of States to public faith defined.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

Privileges of citizens.

1*st Clause.*—The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Executive requisition.

2*d Clause.*—A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Law regulating service or labor.

3*d Clause.*—No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1*st Clause.*—New States may be admitted by the Congress

New States, how formed and admitted.

into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2*d Clause.*—The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the *United States;* and nothing in this Constitution shall be so construed as to prejudice any claims of the *United States,* or of any particular State.

Power of Congress over public lands.

SECTION IV.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Republican government guaranteed.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all

Constitution, how to be amended.

intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Validity of debts recognized.

1*st Clause.*—All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Supreme law of the land defined.

2*d Clause.*—This Constitution, and the laws of the *United States* which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the *United States*, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Oath, of whom required, and for what.

3*d Clause.*—The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the *United States* and of the several States, shall be bound by oath or affirma-

tion to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the *United States.*

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Ratification.

Done in convention by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the *United States of America* the twelfth. In witness whereof we have hereunto subscribed our names. [Signed by the members of the convention.]

AMENDMENTS.

At the first session of the First Congress, begun and held in the city of *New York,* on Wednesday, the 4th of March, 1789, many amendments to the National Constitution were offered for consideration. The Congress proposed ten of them to the legislatures of the several States. These were ratified by the Constitutional number of State legislatures by the middle of December, 1791. Five other amendments have since been proposed and duly ratified, and have become with the other ten a part of the National Constitution. The following are the amendments:

ARTICLE I.

Congress shall make no law respecting an establishment of

religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Freedom in religion and speech, and of the press.

ARTICLE II.

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Militia.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Soldiers.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Search warrants.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, ex-

Capital crimes.

cept in cases arising in the land or naval forces, or in the militia, when in actual service in time of war and public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Trial by jury.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the *United States,* than according to the rules of common law.

Suits at common law.

ARTICLE VIII.

Bail.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Certain rights defined.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Rights reserved.

The powers not delegated to the *United States* by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

Judicial power limited.

The judicial power of the *United States* shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the *United States* by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

Amendment respecting the election of President and Vice-President.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their

ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of Government of the *United States,* directed to the President of the Senate ;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted ;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then, from the two highest numbers on the list,

the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the *United States.*

ARTICLE XIII.

SECTION I.

Slavery prohibited.

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the *United States,* or any place subject to their jurisdiction.

SECTION II.

Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION I.

Citizens and their rights.

All persons born or naturalized in the *United States,* and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the *United States;* nor shall any State deprive any person of life, liberty or property,

without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION II.

Representatives shall be appointed among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the *United States*, representatives in Congress, the executive or judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the *United States*, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Adjustment of representation to the elective franchise.

SECTION III.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the *United States*, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the *United States*, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the

Disabling conditions.

United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SECTION IV.

Treatment of public debts.

The validity of the public debt of the *United States,* authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the *United States,* or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION V.

Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION I.

The right of the citizens of the *United States* shall not be denied or abridged by the *United States,* or by any State, on account of race, color, or previous condition of servitude.

SECTION II.

The Congress shall have power to enforce this article by appropriate legislation.

QUESTIONS.

CHAPTER I.

1. What is the object of Government?
2. What is needed that men may live together in peace?
3. What is the office of Government with respect to this end?

4. What is necessary to the existence of government?
5. What is meant by civil society?
6. Why cannot men live together without government?
7. What consequences would follow the absence of all laws?
8. What is a state of anarchy?

9. Is civil society of human or divine origin?
10. How does it appear that God made men to live together in society?
11. What is said of the savage state?

12. To what is a social civilized state necessary?
13. What would be the result if all men should attempt to lead solitary lives?
14. What is said of those living in a savage state?
15. State in what respect savages are inferior to civilized men.
16. Why are the powers of men living in a savage state imperfectly developed?
17. What state furnishes the conditions for developing man's powers?
18. What inference is drawn from these considerations?

19. Is the State a voluntary society?
20. Is it the result of a social compact?
21. What is meant by a social compact?
22. What does history say about such an event?

23. What is it said men bind themselves by the social compact to do?
24. On what, then, is their obligation to be subject to the restraints of society founded?

25. How does it appear that the compact cannot be the ground of any obligation?
26. What are the fundamental laws of society?
27. Do the rules of justice owe their authority to the consent of the governed?

28. How do men become members of the State?
29. Why is man a subject of law?
30 Why may not men abjure society?
31. What is necessary in order to be a man?

32. Suppose all men should vote to abolish society and government, how would it affect men's obligation to have society and government?

33. What is said of the State and the government?
34. When do they not co-exist?
35. What is the relation of government to the State?
36. When does the State perform extraordinary acts?
37. What are such acts termed?

38. What kind of an institution is Government?
39. How does that appear?
40. What do the Scriptures teach on this subject?

41. What is the fundamental idea of the State?
42. What should all its rules be?
43. Under what conditions would laws be unnecessary?
44. How does it appear that men should act justly?
45. What is the State under obligation to secure to its members?
46. Why is the State under obligation to have government?

47. Where does the supreme power reside?
48. Whence does government derive its powers?
49. By what is the power of the State limited?

50. What powers is the State under obligation to give the government?

51. When we say the sovereign power belongs to the State, what do we mean?
52. In what capacity does the sovereign power belong to the people?

53. How may the relation of individuals to the sovereign power be illustrated?
54. State the illustration

55. Is the sovereign power of the State divisible among the individuals who compose the State?

CHAPTER II.

1. What obligation of the State is mentioned?
2. What question is asked?

3. What is the opinion of some respecting the right to vote?
4. What is the opinion of others?
5. Is the proposition, "Every one has a right to vote," a self-evident truth?

6. What consequence follows the admission of the proposition that the right to vote is an attribute of humanity?

7. What is regarded by some as the ground of man's duty to obey the laws?

8 Why is man a subject of law?
9. How does he become a member of the State?
10. To what fundamental law is he subject?
11. Is his consent asked?

12. What consequence follows the proposition, that those only are subject to laws who have a voice in making them?

13. How do those reason who deny the doctrine of universal suffrage?

14. If suffrage be restricted, on what principle should the restrictions be made?
15. Suppose that limiting suffrage to property holders would secure the choice of the best rulers?
16. Who are interested in having good rulers?

17. On what ground do the advocates of a property qualification defend their views?

18. What is to determine the question, Should the right of suffrage be confined to those who can read and write?
19. Will the ability to read and write qualify one to vote wisely?

20. State the supposed case of the ship at sea?

21. Have all the passengers an equal interest, so far as life is concerned, in the safety of the ship?
22. Does that prove that they should all vote in the choice of a captain?

23. What is said of the analogy between the supposed ship and the ship of state?

24. Who are interested in having the best rulers?
25. What course should, then, be adopted?
26. Would such a course infringe on the rights of any?
27. To what has every man a right?
28. What is said about the limitation of the elective franchise?
29. What took place soon after the adoption of the Constitution?

CHAPTER III.

1. What is the great end of government?
2. What would follow the perfect administration of justice?
3. What difference is there between securing justice and securing liberty?
4. Of what is liberty the result?
5. What do many suppose in regard to men's freedom?
6. What do they suppose men relinquish by becoming members of the State?
7. How do men become members of the State, and subjects of law?
8. What follows from that fact?
9. Is a man at liberty to do in society what he would be at liberty to do if he were a solitary being?
10. How does it appear that he has not relinquished the rights of a solitary being? What comparison is made?
11. What is law designed to secure to man?
12. Why, when it forbids him to take poison or to murder, does it not abridge his liberty?
13. What liberty can he not claim?
14. Suppose the law forbids only that which is wrong?
15. To what has every one a right?
16. When does the law furnish this?
17. What is Macintosh's definition of liberty?
18. What freedom can man claim?
19. When has he all the liberty he can ask?
20. What would a just and wise system of laws forbid and permit?
21. What would the perfect execution of such laws furnish?
22. What would the perfection of law secure?
23. What do some suppose liberty consists in?
24. What may men having the privilege of self-government do?
25. Of what is liberty the result?

26. Why is not a despotic government, if it make and execute wise laws, a free government?
27. What is essential to liberty?

28. What is the best kind of government?
29 How can we determine what is the best kind for a particular nation?

30. What are the three forms of government?
31. What is a Monarchy?
32. What are the titles of the different monarchs of Europe?

33. What is an Absolute Monarchy?
34. Wherein do Absolute Monarchy and Despotism differ?

35. What is said of absolute monarchy when the monarch is an able man?
36. How does that appear?
37. What have republics sometimes found it necessary to do?
38. What examples are given?

39. What is said of the absolute monarch?

40. What is a Limited Monarchy?
41. What is a Constitution?
42. Are constitutions written or unwritten?
43. Of what does the Constitution of Great Britain consist?
44. In an hereditary monarchy, who succeeds to the crown on the death of the monarch?
45. What is meant by the maxim, "The king never dies"?

46. Which is preferable, an hereditary or an elective monarchy?

47. Define Aristocracy.
48. What is the testimony of history respecting this form of government?

49. What is a Republic?
50. What is a pure Democracy?
51. What example is given?
52. To which of the three forms of government does the English Government belong?

CHAPTER IV.

1. How many Theories of Representation are there?
2. State the commonly received theory of representation.

3. What doctrine is a logical inference from this theory?
4. What does that doctrine require the representative to do?

5. State at large the objection to this theory.
6. When ought the will of the people to be obeyed?

7. Show that the people are not infallible.
8. What are many of the provisions of government designed to prevent?

9. State another theory of representation.
10. Why should the people select good and wise men?
11. What should the representatives be restrained by?
12. What should the duties of the legislator be prescribed by?
13. How far should the representative conform to the wishes of his constituents?

14. What is a Constitution?
15. Suppose the constitution comes in conflict with the law of rectitude?

16. What limitation is there to the power of the government?
17. Suppose the legislature passes a law in violation of the constitution?
18. How is such a law to be declared void?

19. Can a man decline to obey a law because he thinks it unconstitutional?
20. What is his duty in regard to it?

21. When is the will of the people supreme?
22. In what way should constitutions be changed?
23. What is said about the propriety of changing the constitution?

24. What law is higher than constitutional law?
25. Suppose the law of the land comes in conflict with the law of God?

26. Who is to decide whether a law is contrary to the law of God or not?
27. Why may not Congress or the Supreme Court decide the question?

28. Show that the right of private judgment would not lead to anarchy.

29. Under what circumstances may a government originating in fraud or violence claim obedience?
30. How long may it be the duty of the people to obey a government which may have no right to command?

31. Does every act of oppression justify resistance to the government?
32. When may the people resist and overthrow a government?
33. What is this right termed?
34. What is said of the worst kind of government?
35. To what does anarchy lead?

CHAPTER V.

1. What educating influence had the Colonial governments?

2. When and where did the first representative legislature meet?
3. How had the people of Virginia been previously governed?

4. What compact did the Pilgrim Fathers form?

5. By whom was it signed?

6. What officers were elected under this compact?
7. Where did the legislative power of the colony reside?
8. What change was made in 1639?

9. When and how was the colony of Plymouth joined to that of Massachusetts?

10. Under what auspices was the colony of Massachusetts planted?
11. What powers had the company?
12. Where was the government of the colony at first?
13. In what way was it transferred to the colony?
14. How did the charter provide that the government should be administered?
15. Who were meant by freemen of the company?

16. What did the officers chosen do with the charter?
17. What powers of government did the colony of Massachusetts then possess?

18. In what respects were the governments of all the colonies similar?
19. Into what three classes have the governments been divided?

20. Describe the Provincial Governments.

21. Describe the Proprietary Governments.

22. Describe the Charter Governments.

23. What amount of power was possessed by the people of the colonies?
24. What advantages resulted from the forms granted them?

25. What relations did the colonies sustain to one another?

26. What privileges did the colonists claim?

27. What power did Parliament claim over the colonists?
28. What was the Stamp Act, and its design?
29. What effect did this act have?

30. What did the attempt to raise a revenue lead to?
31. When and where did the first Congress meet?
32. How were the delegates chosen?
33. What did this Congress do?

34. When did the second Congress meet?
35. What were some of its acts?

36. What powers did Congress assume after the Declaration of Independence?

37. What has this government by Congress been called?

CHAPTER VI.

1. When did Congress take measures for forming a league or union between the States?
2. What measures were taken with reference to this end?

3. By whom were the Articles of Confederation agreed upon?
4. When were they to become binding?
5. When were they ratified by all the States?

6. What was the design of the Articles?
7. What provision did they make for a Congress?
8. How were the States to be represented in Congress?
9. How were the delegates to Congress paid?
10. How was the voting done?
11. Had the States equal power in Congress?
12. State some of the leading powers of Congress.
13. How many States were required to carry all important measures?
14. What provision was made for a Judiciary?
15. What provision for an Executive Department?
16. What was the great defect of the Confederation?

17. How was money raised for the treasury of the Confederation?
18. What power had Congress to regulate commerce?
19. To what were the defects of the Confederation leading the country?
20. What remark of Washington is quoted?

CHAPTER VII.

1. Who led the way in forming the Constitution?
2. State the measures taken by Madison in 1784.
3. What did he induce the Legislature of Virginia to do?
4. What States were represented at the Convention at Annapolis?
5. What action was taken by the Convention?
6. Who drew up the recommendation?
7. What did it propose?
8. By what State was the recommendation acted upon first?
9. What action was taken by Congress?
10. When and where did the Federal Convention meet?
11. What was the whole number of delegates?
12. Name some of the leading members?
13. What did Madison say respecting the ability of the members of the Convention?
14. Who was the President of the Convention?
15. What rule in regard to secrecy was adopted?
16. Who kept a record of proceedings?
17. When was it published?
18. Who made the opening speech of the Convention?
19. State the plan of government proposed by Randolph.
20. How long were the resolutions of Randolph debated?
21. What was the first resolution passed by the Convention?
22. With what views did a majority of the Convention assemble?
23. What change of views took place?
24. State the plan of government embodied in the nineteen resolutions passed by the Convention.
25. What were some of the difficulties in the way of progress?
26. What plan was proposed by Mr. Patterson?
27. State briefly the character of the two plans then before the Convention.
28. Which plan was adopted, and by what majority?
29. State Hamilton's plan of government.
30. What proposition was made by Franklin, in view of the difficulties experienced by the Convention?

31. What did Washington say, in view of those difficulties?
32. What was done when a majority had agreed upon the leading provisions of the Constitution?
33. How long was the report of the Committee of Detail debated?
34. Who revised the style and arranged the Articles of the Constitution?
35. What amendment was made at the suggestion of Washington?
36. By whom was the Constitution signed?
37. Mention some of Franklin's remarks.
38. Mention some of Hamilton's remarks.

CHAPTER VIII.

1. What action did Congress take respecting the Constitution when laid before it?
2. How was the Constitution received by the people?
3. What two eminent patriots opposed it?
4. Who were some of the ablest writers in defence of the Constitution?
5. What were the friends of the Constitution called?
6. How was the Constitution adopted?
7. What State adopted it first, and at what time?
8. What two States adopted it last?
9. In what States was it adopted by large, and in what States by small, majorities?
10. Who was President of the Massachusetts Convention?
11. Who were the leading advocates of the Constitution in the Convention?
12. Who were the leading advocates in the New York Convention?
13. What State refused to adopt the Constitution?
14. What was the action of Rhode Island in regard to it?
15. What was done when nine States had adopted the Constitution?
16. When were elections for officers of the new government held?
17. When was the new government to go into operation?
18. Who were elected President and Vice-President?
19 When and where was Washington inaugurated?
20. Name the members of his Cabinet.
21. When did North Carolina and Rhode Island come into the Union?

CHAPTER IX.

1. Repeat the Preamble.
2. What two views of the Constitution are mentioned?
3. State the league or compact view.
4. State the true view.
5. By whom can the Constitution be abolished or changed?
6. Why can not a State change or abolish it?
7. What evidence have you that the Federal Convention intended to make a national government instead of a league?
8. Give the substance of Mr. Webster's remarks on this subject.
9. What was one ground of objection to the Constitution?
10. What objection was urged by Patrick Henry?
11. What was said by Mr. Wilson, in the Pennsylvania Convention?
12. What was said by Mr. Johnson, in the Connecticut Convention?
13. Were Wilson and Johnson members of the Federal Convention?
14. By whom does the preamble say the Constitution was ordained and established?
15. Does the Constitution say any thing about a league or compact?
16. What does the second section of the sixth article of the Constitution declare?
17. What arbiter for the decision of questions relating to the violation of the Constitution, does the Constitution appoint?
18. In what way can a question respecting the constitutionality of a law be brought before the Supreme Court?
19. What decision of the Supreme Court is mentioned?
20. Why should not the States of the Union be called Sovereign States?

CHAPTER X.

1. What are the three departments of government?
2. Why should these departments be distinct and independent?
3. Is it possible to make any one of these departments perfectly independent of the others?
4. Where is the legislative power of the Government of the United States vested?
5. Of what does Congress consist?

6. Why are two houses better than one?
7. Why should the two Houses be differently constituted?
8. Of what does the Parliament of Great Britain consist?
9. Of what does the House of Commons consist?
10. Of what does the House of Lords consist?
11. How is the House of Representatives composed?
12. What can be said in favor of the Term of Service?
13. Who may vote for Representatives?
14. Why this provision of the Constitution?
15. How old must a Representative be?
16. Why this provision?
17. How old must a member of the House of Commons be?
18. What is required with respect to Citizenship and Inhabitancy.
19. Why should a Representative be an inhabitant of the State for which he is chosen?
20. Into what districts are the States divided?
21. Must a Representative be an inhabitant of the District for which he is chosen?
22. What advantages might follow going out of a District for a Representative?
23. What is said respecting the inhabitancy of the members of the House of Commons?
24. Is there a property qualification for a Representative?
25. State the provisions of the Constitution in regard to the apportionment of Representatives and direct taxes.
26. What limitation is there to the number of Representatives?
27. Suppose a State has less than thirty thousand inhabitants?
28. Do the Representatives vote by States, or as individuals?
29. Why were three-fifths of the slaves counted in the basis of representation?
30. Is the word *slave* found in the Constitution?
31. What has taken place in regard to the ratio of representation as population has increased?
32. What is done when vacancies occur in the representation for any State?
33. How are the Speaker and other officers of the House of Representatives chosen?
34. Where is the power of Impeachment vested?
35. What is meant by Impeachment?

CHAPTER XI.

1. How is the Senate composed?
2. Why the provision that the Senators shall be chosen by the Legislatures of the States?

3. Why do the large and the small States have the same number of Senators?
4. Why should each State have two Senators?
5. What can be said in favor of the term of service?
6. Into how many classes were the Senators divided?
7. What was the object of this division?
8. What must be the age of a Senator?
9. Why this provision?
10. How long must the Senator have been a citizen?
11. Why was that length of time required?
12. Who presides over the Senate?
13. Why should not the Senate choose its own presiding officer?
14. When does the Senate choose a President pro tempore?
15. How is the House of Lords composed?
16. Name the different orders of nobility.
17. By whom are peers created?
18. How may the King carry a measure in the House of Lords?
19. Who is the presiding officer of the House of Lords?
20. Where is the power to try impeachments vested?
21. Who presides in the Senate when the President is tried?
22. Why should not the Vice-President preside on that occasion?
23. What vote is necessary to conviction?
24. By whom must the impeachment be made?
25. Why should not the impeached be tried by a court of justice instead of the Senate?
26. Whence was this provision of the Constitution borrowed?
27. What penalties can be inflicted on those convicted, on impeachment?
28. What penalties can be inflicted in Great Britain?
29. Suppose a man be impeached and convicted of a crime punishable by law?
30. What provision of the Constitution in regard to the time, place, and manner of holding elections?
31. How often must Congress meet?
32. Why should it meet once a year?
33. Who judge of the election and qualification of members?
34. What reason for this provision?
35. How many are necessary to constitute a quorum?
36. What may a smaller number do?
37. Give the reasons for those provisions.
38. Why should each House determine the rules for its proceedings?
39. How may a member be expelled?
40. What do the rules that govern the proceedings of legislative bodies constitute?
41. What does the Constitution require as to the keeping of a journal?
42. Is it to be published?

43. When must the yeas and nays be called?
44. Give the reasons for the above-mentioned provisions.
45. With what exceptions are the proceedings of Congress to be open to the public?
46. What is necessary in order to be permitted to witness the proceedings of Parliament?
47. What is done when a vote is taken?
48. What does the Constitution say respecting the adjournments of Congress?
49. How are members of Congress paid for their services?
50. What special privileges do they enjoy?
51. Why are these privileges conferred?
52. Suppose a member of Congress commits a high crime?
53. To what offices are members of Congress ineligible?
54. What reason can be given for this?
55. Can the members of the United States Cabinet hold seats in Congress?
56. Can members of the English Cabinet hold seats in the House of Commons?
57. Where must all bills for revenue originate?
58. Whence was this provision borrowed?
59. Can the Senate amend a revenue bill?
60. Where must all bills for revenue originate, in Parliament?
61. Can the Lords amend a revenue bill?
62. What power does this give to the Commons?
63. State the mode of passing a law.
64. What advantage may result from the qualified veto possessed by the President?
65. Has the King of England an absolute negative?
66. What must be done with every order and resolution of Congress?
67. What was the provision intended to prevent?

CHAPTER XII.

1. What is the power of Congress as to Taxation?
2. For what purposes may Congress lay and collect taxes?
3. Why can not Congress lay a higher tax in New York than in Maryland?
4. Why could not Congress raise money to aid foreign nations?
5. What are Taxes?
6. What are Imposts?
7. What are Excises?
8. What are Duties?
9. Can Congress impose duties for the purpose of protecting domestic industry?

10. What evidence of this is found in the preamble to the first Act of the first Congress?
11. What do decisions of the Supreme Court show?
12. What department of the Government can borrow money?
13. Why should Congress have this power?
14. What is the power of Congress as to commerce?
15. Why should Congress have this power?
16. What power does it involve?
17. What is an embargo?
18. Show that Congress has power to lay an embargo.
19. What are Navigation Laws?
20. What evils would follow if the State had power to regulate commerce?
21. What are Naturalization Laws?
22. Where is the power to pass such laws vested?
23. What are Bankrupt Laws?
24. Why should Congress have exclusive power to pass such laws?
25. What is said of Insolvent Laws passed by State Legislatures?
26. What is the provision of the Constitution relative to coinage, weights and measures, &c?
27. Why should these powers be vested in Congress?
28. How may post-offices and post roads be established?
29. What are Copyright and Patent Laws?
30. Why should power to pass such laws be possessed by Congress, and not by the State Legislatures?
31. What power has Congress as to piracy and offences against the Law of Nations?
32. Where is the power to declare war vested?
33. What are Letters of Marque and Reprisal?
34. By whom may armies be raised and supported?
35. Why the provision forbidding Congress from making an appropriation for a longer term than two years?
36. By whom may a navy be established?
37. For what purpose, and by whom, may the militia be called out?
38. Who is to decide when the danger is sufficient to justify calling forth the militia?
39. What power does Congress possess over the seat of government, and other territory purchased for forts, &c?
40. Why should Congress possess this power?
41. What general power is given to Congress?
42. What clause in the Constitution gives Congress power to charter National Banks?
43. State facts connected with the charter of the first National Bank.
44. State facts connected with the second National Bank.

45. State the main argument in favor of the constitutionality of a law chartering a bank of the United States.
46. Has the question been before the Supreme Court?
47. When was the act, authorizing the National Banks now in existence, passed?

CHAPTER XIII.

1. Up to what date did the Constitution prohibit laws for abolishing the slave trade?
2. Why this prohibition?
3. When may the Writ of *Habeas Corpus* be suspended?
4. Explain what is meant by a Writ of *Habeas Corpus.*
5. Who is to decide when the public safety requires the Writ to be suspended?
6. What is a Bill of Attainder?
7. Why should not Congress have power to pass such a bill?
8. What is an Ex Post Facto Law?
9. What is a Capitation Tax?
10. In what proportion must such taxes be laid?
11. What provision of the Constitution requires Congress to treat the States with equal justice?
12. How can money be drawn from the Treasury?
13. Can Congress grant a title of nobility?
14. Can a State grant a title of nobility?
15. Why this prohibition?
16. Why are officers of the United States prohibited from accepting any present or title from a foreign power?
17. State the constitutional prohibitions on the States?
18. What is meant by Bills of Credit?
19. May the States borrow money and issue bonds?
20. What is a "tender"?
21. Can Congress make any thing except gold and silver a legal tender?
22. Illustrate what is meant by a bill impairing the obligation of contracts.
23. Is a charter a contract?
24. Are the State insolvent laws consistent with the provision respecting impairing the obligation of contracts?
25. For what purposes may a State impose duties?
26. Why are the States prohibited from keeping troops, ships of war, and making treaties with other nations?
27. May Virginia enter into a league with Maryland? Why not?
28. What powers did the Constitution confer on Congress?
29. What powers were reserved to the States?

CHAPTER XIV.

1. Where is the Executive power vested ?
2. Show that a single is better than a plural Executive.
3. What is the President's term of office ?
4. What can be said in favor of that term ?
5. What objections could be brought against a longer term ?
6. Can the President be re-elected ?
7. What can be said in favor of this provision ?
8. For how long a period is the Vice President chosen ?
9. What events have shown that the office of Vice-President is a very important one ?
10. By whom are President and Vice-President chosen ?
11. How many electors does each State appoint ?
12. What persons are excluded from being electors ?
13. What power has Congress in regard to the electors ?
14. Why does the Constitution provide that the day of election must be uniform throughout the United States ?
15. What persons are eligible to the office of President ?
16. Why should the President be a native-born citizen ?
17. Why should he be thirty-five years old ?
18. Why the provision as to residence ?
19. State the mode in which the President and Vice-President are chosen.
20. What Presidents were chosen by the House of Representatives ?
21. What is done when the office of President becomes vacant by death or removal ?
22. What Vice-Presidents have thus become Presidents ?
23. What is done when there is no Vice-President ?
24. What is the provision of the Constitution in regard to the compensation of the President ?
25. What is the salary of the President ?
26. What oath or affirmation is required of him ?

CHAPTER XV.

1. State some of the powers conferred on the President by the Constitution.
2. Why should the military power of the nation be under the control of the President ?
3. What prevents his being a military despot ?
4. Where is the pardoning power vested ?
5. Why should there be a pardoning power ?

6. What limitation is there to the power of the President to grant pardons?
7. Where is the treaty-making power vested?
8. By whom are ambassadors and officers of the United States appointed?
9. What provision is made for the appointment of inferior officers?
10. Why is the treaty-making power given to the President and Senate, instead of Congress?
11. By whom are treaties negotiated?
12. When are they laid before the Senate?
13. Is the President bound to ratify a treaty if the Senate approve it?
14. By whom must the money necessary to carry a treaty into effect be voted?
15. Have the Representatives a right to withhold the appropriation, if they do not approve the treaty?
16. What debate on this subject is mentioned?
17. On whom does the English Constitution confer the power to declare war and make peace?
18. Suppose the House of Commons do not approve of a declaration of war by the King.
19. Who appoints the officers of the English government?
20. What benefits may result from the provision requiring the consent of the Senate to the appointments of the President?
21. What is an Ambassador?
22. What is a Consul?
23. Where is the power of removal from office vested?
24. By whom has that power been heretofore exercised?
25. What is done in case of vacancies occurring during the recess of the senate?
26. How may this power be abused?
27. In what way is it customary for the President to make his communications to Congress?
28. When may the President convene and adjourn Congress?
29. Who has power to receive ambassadors?
30. Show that this is an important power.
31. What is the duty of the President as to the laws?
32. How may the President be removed from office?
33. How may all civil officers be removed?
34. What is meant by "civil officers"?
35. Where is the executive power of the English government vested?
36. Who perform all executive acts?
37. What is meant by "the administration"?
38. What determines the political character of the administration?
39. When is it customary for ministers to resign?
40. Who is commander-in-chief of the army and navy?

41. By whom are the judges appointed?
42. What is the Privy Council?
43. What power has the Privy Council?

CHAPTER XVI.

1. What is the office of the Judiciary?
2. Where is the judicial power of the United States vested?
3. When and how were the National Courts organized?
4. Name the three national courts.
5. Of what does the Supreme Court consist?
6. When and where are its sessions held?
7. How many Judicial Circuits are there?
8. Who are the Circuit Judges?
9. What are the District Courts?
10. What are the officers of the national courts?
11. What is the duty of the Attorney-General?
12. What is the duty of the District-Attorney?
13. What is the duty of the Marshal?
14. What is the duty of the Clerk?
15. How are the Judges appointed?
16. What is their Tenure of Office?
17. Why should they hold office during good behavior?
18. Suppose the judge holds his office at the will of a monarch?
19. What objection can be urged against an elective judiciary?
20. What objection can be urged against the tenure of office during good behavior?
21. How is the compensation of the judges fixed?
22. To what does the judicial power extend?
23. When does a case "arise" under the Constitution?
24. Give an example.
25. Give an example of a case arising under a treaty.
26. What is meant by Equity Jurisprudence?
27. What is meant by Admiralty Jurisdiction?
28. Can the United States bring a suit against an individual?
29. Can an individual bring a suit against the United States?
30. Can citizens of one State bring a suit against another State?
31. Can foreigners residing in the United States sue in the national courts?
32. In what cases has the Supreme Court original jurisdiction?
33. What is the principal business of the Supreme Court?
34. What provision is made by the Constitution for trial by jury?
35. In trials by jury, mention the two kinds of judges.
36. Where must one accused of crime be tried?

37. How does it appear that Congress can establish tribunals inferior to the Supreme Court?
38. May appeals be taken from the State Courts to the National Courts?
39. Who was the first Chief-Justice of the United States?
40. What are the superior courts of England?
41. What is the Court of Chancery?
42. Name the five superior Courts of Chancery?
43. What is the highest court of common law in England?
44. How many judges has it?
45. Of what cases does it take cognizance?
46. Of what does the Court of Common Pleas consist?
47. What is its jurisdiction?
48. What are real actions?
49. Of what does the Court of Exchequer consist?
50. What is said respecting its jurisdiction?
51. Which is the highest judicial tribunal in Great Britain?

CHAPTER XVII.

1. What is Treason, as defined by the Constitution?
2. Why is it defined in the Constitution?
3. On what testimony can one be convicted of treason?
4. Who has power to declare the punishment of treason?
5. What is the punishment of treason by the common law?
6. What is the punishment ordered by Congress?
7. What is meant by "corruption of blood"?
8. What does the Constitution say respecting it?
9. What is the provision of the Constitution in regard to the public acts, records, and judicial proceedings of the States?
10. To what rights are the citizens of each State entitled in other States?
11. Suppose a person charged with crime in one State flees to another?
12. What was the provision of the Constitution as to fugitive slaves?
13. How may new States be admitted into the Union?
14. What limitations are mentioned in the Constitution?
15. What is the power of Congress over the Territories?
16. Of what do the Territorial governments consist?
17. What does the Constitution require the United States to guarantee to every State in the Union?
18. Show how the Constitution may be amended.
19. Repeat the section containing the supremacy of the Constitution.
20. What is required of the National and State officers?

CHAPTER XVIII.

1. What is a Bill of Rights?
2. What does the first amendment to the Constitution forbid?
3. Why should freedom of speech be secured?
4. What is the difference between freedom of the press and licentiousness of the press.
5. What right does the second article of the Amendments secure?
6. What does the third article forbid?
7. What does the fourth article forbid?
8. What is necessary before one can be tried for a crime?
9. What is a Grand Jury?
10. When is a man said to be indicted?
11. Why should not a man be tried twice for the same offence?
12. When and where must one accused of crime be tried?
13. What privileges are secured to the accused?
14. What is the seventh article designed to secure?
15. What does the eighth article guard against?
16. What does the ninth article guard against?
17. What is the tenth article?
18. What was the design of this amendment?
19. What is the thirteenth amendment?
20. When was the Amendment proposed in Congress?
21. When was its ratification by the Legislatures of three fourths of the States officially announced?

CHAPTER XIX.

1. Which State was the first to form and adopt a constitution?
2. What two States continued, after the Declaration of Independence, to use their charters as constitutions?
3. Which was the first new State admitted to the Union after the adoption of the Federal Constitution?
4. How was the territory out of which Louisiana and other States were formed, acquired?
5. What controversy arose in connection with the application of Missouri for admission to the Union?
6. How was it settled?
7. From what territory was the State of Texas formed?
8. How was the territory constituting California acquired?
9. What States were admitted without having previously had Territorial governments?

10. What was Texas when she applied for admission?
11. To what are the Constitutions of all the States similar?
12. How are the powers of government divided in them all?
13. Where is the legislative power vested?
14. Where is the executive power vested?
15. What is said of the judicial systems of the States?
16. What is said respecting the meeting of the Legislatures?
17. What is said respecting the appointment of judges?
18. What is said respecting Chancery courts?
19. What is said respecting the jurisdiction of the State courts?
20. Before what officers do the smaller matters of litigation come?
21. What is the relation of the State Constitutions to the Constitution of the United States?
22. How are the States divided?
23. What is a County Seat?
24. What political powers are exercised by the Townships into which some of the States are divided?
25. What an incorporated Borough or City?
26. Where is the legislative power possessed by the City of New York vested?
27. Where is the executive power of the City vested?
28. How is the Mayor elected?
29. What is the duty of the Chamberlain of the City?
30. Has the City of New York a separate judiciary?
31. What is said of all the large Cities in the Union?

CHAPTER XX.

1. What is International Law?
2. Of what should it consist?
3. Of what does it consist?
4. What is the remedy in case of violation?
5. What is the relation nations sustain to each other?
6. Has a nation a right to interfere in the concerns of another nation?
7. What government is to be recognized by other nations?
8. What effect has a change of government on the treaties and obligations of a nation?
9. How far does a nation possess exclusive jurisdiction over the adjoining sea?
10. To whom does the open sea belong?
11. To whom does a river dividing two countries belong?
12. What rights have foreigners residing in a country?

13. What persons are not subject to the laws of the land in which they may sojourn?
14. Why should ambassadors be independent of the jurisdiction of the country to which they are sent?
15 When are treaties binding?
16. Suppose one party violates the treaty?
17. When may a nation resort to war?
18. Is a formal declaration and notice to the enemy necessary before commencing hostilities?
19. What is the effect of a state of war on the commercial intercourse of the citizens of the countries at war?
20. What is said of debts due the subjects of an enemy?
21. What is said of an enemy's property at sea?
22. What is said of property sailing under the flag of an enemy?
23. What is said of Privateering?
24. What must be done with all captured property?
25. What is said respecting neutral nations?
26. What articles are neutrals prohibited from carrying?
27. To what does the attempt to violate a blockade subject the vessel and cargo?
28. What is said respecting hostile dispatches?
29. What is said of the Right of Search?
30. What is a Truce?
31. What is a Treaty?
32. What is said of Piracy?
33. What is said of the Slave Trade?
34. What is said respecting the recognition of international law.

CHAPTER XXI.

1. What is the Divine Law?
2. What is the Constitutional Law.
3. What is International Law?
4. What is Municipal Law?
5. What is Statute Law?
6. What is the Common Law?
7. How far is the Common Law the law of the land in the United States?
8. What is the Civil Law?
9. What is the Code?
10. What are the Institutes?
11. What are the Pandects?
12. What are the Novels of Justinian?
13. What is the Canon Law?
14. What is Martial Law?
15. What is Parliamentary Law?

CHAPTER XXII.

1. What are necessary in every deliberative Assembly?
2. What is the duty of the Presiding Officer?
3. How may bills be introduced?
4. For what are Committees formed?
5. What is the object of going into Committee of the Whole?
6. When is a motion to adjourn in order?
7. What is said of a motion to lay on the table?
8. How is the previous question put?
9. What is said of a motion to strike out the enacting words?
10. Who can move a reconsideration of a question?
11. Can a motion to reconsider be repeated?

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